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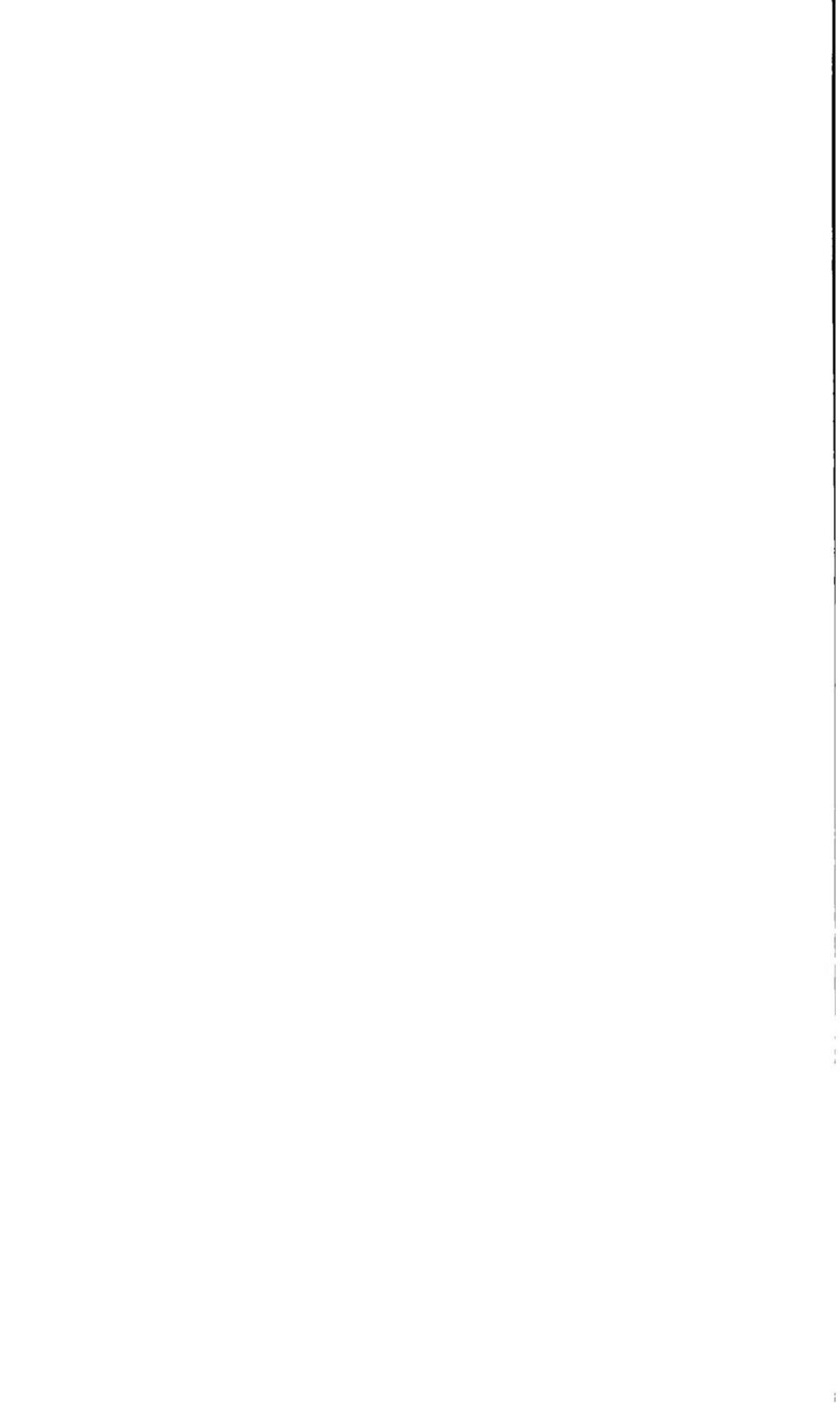
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POLITICAL SCIENCE QUARTERLY

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A REVIEW DEVOTED TO THE HISTORICAL STATISTICAL
AND COMPARATIVE STUDY OF POLITICS
ECONOMICS AND PUBLIC LAW

EDITED BY
THE FACULTY OF POLITICAL SCIENCE
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POLITICAL SCIENCE QUARTERLY

SOVEREIGNTY AND GOVERNMENT

EDMUND BURKE'S observation that "it is very rare indeed for men to be wrong in their feelings concerning public misconduct; as rare to be right in their speculation upon the cause of it," applies to the operations of the human mind upon many subjects. As products of evolution, feelings are older than thoughts; they represent ages of adjustment of the human organism to its environment; they are closely related to instincts. Yet it would not be safe to say that, while the speculations of the multitude upon the causes of things in general are more or less fantastic, the feelings of the multitude may always be accepted as right and trusted for guidance. No writer more vividly than Burke himself, in his *Reflections on the French Revolution* and elsewhere, has shown us how darkly evil the feeling of the multitude may be when, in moments of frenzy, the populace gives itself over to acts of mad destruction or of savage cruelty.

Accepting, then, the general truth that, with some startling exceptions, the feelings of mankind are sounder than its speculations, we are confronted with the complicating fact that theories play a large part in arousing and sustaining feeling. There has never been a popular revolution in which abstract theories of government have not been invoked to inflame the multitude. Theories of popular sovereignty played this part in the French Revolution; theories of the essential sacredness of the individual personality played a like part in the anti-slavery struggle in the United States. How, then, can we say that feelings are more

likely than theories to be right, when feelings and theories are so intimately blended?

The true answer to this question is, I think, that theories are of two radically different kinds, which we must be careful to distinguish when we attempt to study the concerted activities of interacting minds. The theories that inflame passion or awaken conscience are not the scientific or the pseudo-scientific explanations of causation that interest the intellect; rather are they certain assumptions regarding ends to be attained, or, more abstractly, regarding the relative values of the things that men hold dear. At the opposite pole of thought from speculation upon the causes of things, they are theories not of what has been, what is, and what inevitably must be, but of what ought to be. They are formulas not of knowledge or of error, but rather of conviction; and this amounts to saying that they are products of feeling rather than of thinking. They arouse feeling, because they themselves are compressed expressions of feeling and have a correspondingly high explosive power.

The power and the fate of the great religions of the world unmistakably reveal the fundamental difference between theories of what was and is, on the one hand, and theories of what should be, on the other hand, in their respective relations to human feeling and to conduct. The speculative theories of causation embodied in religious systems have fallen into discredit; but the convictions of human need, of the supremely desirable ends of life, of what ought to be, that religious systems have fostered and transmitted, have been and in the main are still vitally true. The intellectual product has been childish; the tremendous mass of feeling has been on the whole a true adjustment of conscience and will to an all-shaping environment. The grotesque totemism of savagery, as a theory of causation, could not survive the infancy of the human mind; but the conviction that the totem kin ought to live on terms of mutual aid with some chosen species in the plant or animal world preserved food and medicinal supplies from wanton destruction, stimulated human imitation of wild creatures, and in countless useful ways enabled the primitive man himself to survive. The theology developed in connection with monotheism, as an explanation of the origin

and order of the universe, has encountered destructive criticism in a scientific age; but the conviction that men whose common lot demands a comprehensive organization should not persist in worshipping hostile gods at miscellaneous altars is as well grounded to-day as it was when warring tribes first pooled their interests in the creation of political states.

Next to theories of religious obligation, theories of the rightful forms of government and of the rightful scope of governmental power have most profoundly affected human feeling. They have pacified stolid millions to uncomplaining obedience, as in the czar-worshipping Russias of yesterday. They have struck the spark of rebellion that has dethroned kings and disintegrated empires. To the extent that these theories are formulas of feeling rather than of speculation, there is a certain presumption that they are true products and expressions of some great collective need—that they reveal obstinate conditions of existence, to which the social scheme and the common conduct of men must somehow be accommodated.

Some of the more important theories of government, however, that have been held in modern times and are still vital factors of continuing political evolution, are highly complex products of both popular feeling and expert speculation. They have been thrown into their accepted form by intellects of philosophical grasp and power, whose conceptions of causation have certainly not been wholly untrue. Scrutinized by the logician, they have been found to be masterpieces of reasoning. Granting their premises, we have been unable to reject their conclusion, that human government may rightly do this or may not rightly do that. But when attacked as merely *a priori* systems, they have fared not so well. The origins of state and government which political philosophers have formulated have been derived by them from an examination of the nature of the state or from an analysis of political forces. The historical origins of actual states and governments seem to have been very different; so different that the philosophical hypotheses appear to be almost unrelated to reality.

The sufficiency and the finality of this *a posteriori* criticism, I now venture to question. I think that it has been too literal

and too narrow, and that it has missed the points of real importance. What it is really worth while to know, I suspect, is whether the theories in question represent irresistible forces and express them with substantial truth. If they do, it matters little whether these forces have or have not created states and established governments in this or that peculiar way. Have the conclusions respecting the rightful authority of governments been in truth not only logical deductions from assumed premises, but also expressions of prevalent popular feeling? Has the popular feeling corresponded to some prevailing condition of social existence, and therefore to some compelling necessity for a given form of collective conduct? Do this moral necessity and the underlying conditions of existence from which it springs correspond substantially, if not narrowly and literally, to the conceptions of the nature and origin of the state from which the propositions touching the authority of government have been deduced? If these questions must be answered affirmatively, are not the great political theories substantially verified by *a posteriori* criticism, and have we not a scientific basis from which to forecast the probable future evolution of human government?

For the purpose of this inquiry, I propose to examine the fact as well as the conceptions of sovereignty; the actual forms and powers of government as well as the theories of their legitimate range and activity.

If with the aid of such a product of critical scholarship as Professor Dunning's illuminating volumes,¹ one traces the conception of sovereignty through its curious wanderings from the *Politics* of Aristotle to the *De corpore politico* and the *Leviathan* of Hobbes, and thence down through the analytical jurisprudence of Austin to the lectures of Sir Henry Sumner Maine, he cannot fail to see that the so-called "Austinian" definition,²

¹ Dunning, Political Theories, Ancient and Medieval (1902); Political Theories, from Luther to Montesquieu (1905).

² The definition is in fact not Austin's; it is one which Maine attributes to Austin. Cf. Austin, The Province of Jurisprudence Determined, lecture vi, and Maine, Lectures on the Early History of Institutions, lecture xii.

which has become the cornerstone of modern political science, is modern not only chronologically but also qualitatively and structurally. For example, nothing so arrests the attention of a reader fresh from the pages of Burgess, of Dicey, of Sumner Maine or of Austin himself, on going back to the writings of Hobbes, as the emphasis that Hobbes lays upon supreme right, in distinction from supreme power, as the essential attribute of sovereignty.

In the modern mind the initial political thought is that somewhere, in every state, there resides a power that can and does compel the obedience of every subject.

There is in every independent political community—that is, in every political community not in the habit of obedience to a superior above itself—some single person or some combination of persons which has the power of compelling the other members of the community to do exactly as it pleases. This single person or group—this individual or this collegiate sovereign (to employ Austin's phrase)—may be found in every independent political community as certainly as the center of gravity in a mass of matter.¹

And Professor Burgess, answering the question, "What now do we mean by this all-important term and principle, the sovereignty?" says: "I understand by it original, absolute, unlimited, universal power over the individual subject and over all associations of subjects."²

Consistently with this assumption the modern mind accepts the distinction, first clearly made by Bodin,³ between the state and the government—a distinction which in the last analysis means that sovereign and government are neither necessarily nor always one and the same. Governments may and do fail to enforce their commands; nay, may themselves be overthrown. The sovereign, however, we are assured, is not contemned when governments are defied. In reality it is the sovereign that acts; for what the sovereign permits, the sov-

¹ Maine, *Icc cit.* p. 349.

² Burgess, *Political Science and Comparative Constitutional Law*, vol. i, p. 52.

³ Dunning, *Political Theories, from Luther to Montesquieu*, p. 103.

ereign commands, and governments are but creatures and agents of the sovereign will.

In the radically different thought of Hobbes, sovereignty is not primarily a power to compel obedience; it is rather an unquestionable right to compel, if it can, and Hobbes does not pretend that it always can. Talk as he may about sovereignty holding its subjects "in awe," he is barred, by his initial hypothesis that through a social covenant sovereignty is *instituted*, from claiming that it is or can be an irresistible power. If instituted, it is a created thing. The natural man gave and the natural man may take away. On this point Hobbes has no illusions, notwithstanding his contention that in the social covenant men make absolute surrender of their natural rights and therefore of their wills; for his theory of revolution amounts to an admission that, while subjects have no right to resume either their natural rights or their natural wills, they may *de facto* resume their natural wills and, by resolving society back into a state of nature, get back *de facto* their natural rights. If, then, we hold with modern writers that sovereignty is supreme power and supreme power is sovereignty, while a supreme right—*instituted* or conferred by sovereignty—to exercise power is merely government, it would seem that Hobbes's conception of sovereignty is in truth a conception rather of government. At any rate, we may at least claim that the conception of Hobbes leads as inevitably to the identification of government with sovereignty as the "Austinian" conception to the distinction between state and government.

If now we follow the concept farther and farther back, to Bodin, to Dante, to Aristotle, we find that it becomes less and less "Austinian." For one thing, it becomes more concrete. Bodin, it is true, discourses of sovereignty as an abstraction, since he recognizes that it is a certain bundle of attributes and powers; but the sovereignty that he habitually thinks of is, nevertheless, embodied in a sovereign, that is to say, a king. For Dante, sovereignty and monarchy are one and the same. He not only identifies sovereignty with government, he also very nearly identifies both government and sovereignty with the state; his conception on this point seeming often to be almost

the exact opposite of that which modern writers hold. The state is the empire in opposition to the church, and the legitimate emperor in the Roman succession is the sovereign. Aristotle, familiar with every form of the state and of government, does not thus identify sovereignty only and always with an individual, but he does identify it with some very concrete parcel of humanity; with a king or a tyrant, with an aristocratic class or oligarchy, or with an Athenian *demos*—one of the most concrete things that ever has existed.

Not one of these writers possessed Hobbes's sharply defined conception of sovereignty as supreme and absolute right; not one of them had the clean-cut Austinian conception of sovereignty as irresistible power. Rather did they all think of it more or less crudely and hazily, as supreme but not necessarily resistless power, as supreme but not necessarily absolute right, as supreme but not always unquestionable authority.

Let us pass now from these conceptions of sovereignty to the social fact of sovereignty; and let us ask whether we are justified in assuming that the fact has at all times been one and the same fact, or whether sovereignty itself may have been a variable, an evolutionary phenomenon, created by and in turn creating varying moods of human feeling, varying attitudes of will, and consequently varying conceptions and speculations. This is a question which, I suspect, the student of political science as such or the jurist as such may be unable to answer. It is, I venture to think, a sociological question; and I believe that the answer to it, if found at all, must be found through ways of looking at social facts and processes that are acquired only through some sociological training.

Putting aside for the moment, then, all carefully phrased definitions and finely analytical distinctions, let us see whether, as a matter of fact, there really is somewhere in every commonwealth a finite power, personal or social, that either does or can compel the obedience of practically all members of the community. I am aware that this question assails fundamental assumptions, which have been thought to be as solid as the everlasting hills. But now and then in the progress of science such questions have to be asked, and the consequences sometimes

are curious. Who thirty years ago would have dreamed that physicists would so soon question the indivisibility of the primordial atom? Yet here we are to-day in a new world of physical conceptions, from which the indivisibility and everlastingness of the atom have forever been banished. When the old conceptions were subjected to a really radical scrutiny, under the light of really fundamental facts, they crumbled. Are our assumptions on the subject of sovereignty, the assumptions of political science, certainly more substantial?

As might have been expected, it was the consideration of very obvious and commonplace facts that shattered the atom into ions and corpuscles. And facts that daily stare us in the face awaken our scepticism about sovereignty of the "Austinian" description. Is there any power in any commonwealth that really does compel the obedience of everybody, or even of every particular individual whom it sets out to coerce? Does any one seriously believe that there is such a power?¹ In every-day life a political subject who cannot successfully defy or elude any known sovereign, Christian or pagan, oriental or occidental, during some part of his waking hours, and in some of his affairs, lacks executive ability. He will never be a satrap or an alderman, certainly not a "magnate" or a "boss." Of course the political philosopher admits this, but he tries to save his assumptions by assuring us that no one man could persistently defy the sovereign authority of the state, if the sovereign really set about the business of bringing him to book, or that, if he could, the rebel himself would be the sovereign.

Being now in a sceptical frame of mind, let us be sceptical to the end. Who or what is this sovereign that can, if he or it will, compel an unwilling obedience? Is it an individual, a

¹Austin certainly did not so believe. His own words, in the *Province of Jurisprudence Determined*, lecture vi, are: "In order that a given society may form a society political, habitual obedience must be rendered by the *generality or bulk* of its members to a determinate and common superior. In other words, habitual obedience must be rendered by the *generality or bulk* of its members to one and the same determinate person or determinate body of persons." Austin here follows the perfectly reasonable thought of Bentham, *A Fragment on Government*, chapter i, section xii, and the passage is irreconcilable with the definition that Maine offers as "Austinian."

king? Has history told us of any king who, alone and unaided, ever compelled or could have compelled the obedience of five per cent of his worshipful subjects? Is the sovereign then the king plus someone else, the king and his liegeman; or, in a republic, is the sovereign some definite or indefinite number of individuals acting together? Undoubtedly every political philosopher who has conceived of sovereignty as a power to compel obedience has consciously or unconsciously thought of it as a collective power.

Obviously a group of individuals, if their number is large enough, can, if they will and as long as they will, compel any one individual to obey them. But observe that we are here talking not of an indivisible phenomenon, that is to say of power, but of a complex of phenomena; that is to say of power resulting from a certain correlation of forces and conditions. If certain individuals will the same thing and act together, and if they are sufficiently numerous, they undoubtedly constitute a power that can compel obedience. Here, at last, we get back to our fundamental question: Do we find, in every state and at all times so perfect and so continuous a concert of so many individual wills that at every instant it can, whether or not it does, compel the obedience of all or of most of the members of the commonwealth? This is what sovereignty in the "Austinian" sense signifies when we translate the abstract into the concrete. So interpreted, is sovereignty in the "Austinian" sense a fact? I have to record my perplexities and doubts. I am not prepared to deny that in certain communities and at certain times certain groups of men attain a sufficient degree of mental and volitional solidarity to compel not only particular individuals, and not only great numbers of individuals, but practically entire commonwealths, to submit and obey for a while. But I suspect that the phenomenon is comparatively rare and decidedly intermittent. In short, I suspect that sovereignty, as the actual power to compel obedience, is one of the comparatively rare, as it is certainly one of the highly complex, phenomena of human society.

If after weighing these objections we cannot longer think of sovereignty as a power to compel obedience save as an occa-

sional phenomenon, how shall we think of it? Or, to put the case a little differently, what practically universal social phenomenon is it that has compelled the political philosopher to form some conception or at least to construct some definition of sovereignty? One thing seems plain. In every state we do find a superior or a supreme power, individual or collective, which, as a general thing, is respected and obeyed. The only allegations that we have questioned are that this power is always absolute, that it always secures obedience, and that it can always compel.

Obviously the question that we now should ask is: What other ways of getting obedience are there besides the way of compulsion? And if we find that there are other ways, we should ask if each is correlated with some historical form that sovereignty assumes.

The earliest and probably to this day the most popular conception of sovereignty identifies it with a personal sovereign—a monarch or a dictator. We have seen that no mere individual can to any great extent compel the obedience of his fellows. Yet one of the most familiar facts in human society is the actual obedience of the inferior many to the superior few. From the ringleader of the school-boy crowd or of the street gang to a Julius Caesar or a Napoleon Bonaparte, we find every gradation of personal supremacy recognized and acknowledged in various acts of subordination and obedience, ranging from a mere following to loyalty, and rising at times to an almost idolatrous devotion. The power that calls forth obedience is not necessarily the prowess of the bully. Now and then physical strength has been an important factor in personal supremacy. It was conspicuously so in William of Normandy; but Caesar and Napoleon are understood to have been of inferior rather than superior physical parts. It is hardly necessary to linger on this point, because the consensus of human observation is clear. In a vast majority of instances the leader and ruler who is generally obeyed dominates through that gift which psychologists call the power of impression—a mental and moral power, the power of mere mind to awe and to fascinate, at times to inspire fear.

Not quite so familiar a fact as personal supremacy, but a

commonplace of history none the less, is the supremacy of a superior class. If individual supremacy may be called personal sovereignty, the supremacy of many superiors collectively, constituting an aristocracy or an oligarchy, may be called class sovereignty. As a fact of history such supremacy has commonly originated in conquest. The inferior social classes have at the beginning been the subjugated inhabitants of a conquered land, whose lives have been spared by their conquerors. But the day comes when they render an obedience that is not primarily enforced by physical means. It may be a homage rendered to authority—a form of power that is essentially mental and moral, backed up by tradition and sanctioned by religion; a power appealing to the sentiment and sometimes to the conscience of the obedient. Or, obedience may be exacted by economic superiority, the ruling oligarchy being rich and the subservient people being poor; the exaction nevertheless falling well short of compulsion.

At times, however, as we have admitted, there appears in human populations the phenomenon of a collective power which, for the time being and until the power itself disintegrates, is physically irresistible. The elementary form and primitive example of it is the mob-crowd bent on vengeance, on lynching or devastation. Throughout history there have been occasions when the masses of the people, aroused to opposition and compacted by revolutionary madness, have become a force that no individual, class or group could withstand. In the most literal and brutal sense, it has compelled obedience to its will. In modern democracies mere numerical majorities are in like manner irresistible, even in days of domestic peace, so long as they maintain the psychological solidarity of a crowd, because resistance instantly converts them into a demoniac physical power. This resistless social will-power of the psychologically unified crowd or majority may appropriately be called mass sovereignty.

Finally, in a highly intelligent population, where reason on the whole controls sentiment, there are evolved a collective opinion to which individuals in general defer and a collective will which individuals in general respect and obey. Every

member of the community, from the humblest to the highest, may contribute through discussion some element of thought to the common judgment, and through voluntary conduct some element of moral power to the general determination. The general will so evolved might command, exact or compel a vast deal of individual obedience, but actually it does something different and higher. It evokes obedience. Individuals in general submit to it, not as being compelled but voluntarily, because they feel that such is the right and the normal thing to do. Appealing to reason, to conscience and to common sense, the general will calls forth a cheerful and a reasonable service. This tremendous power of the general and deliberate will is a general sovereignty, in the sense that it is not the power of any mere mass, of any one class or of any one person.

What now have we discovered? Briefly this. Of four possible and familiar modes of that superior power which in political society actually secures the obedience of most men most of the time, one only is a power to compel obedience, and that one is a power that is conditional upon an obsession of the multitude. Personal sovereignty, the oldest and on the whole the commonest form, is not a power to compel, it is rather a power to command obedience. Class sovereignty, appealing through religion and tradition to human sentiment, or relying on superior wealth, is a power to inspire or to exact obedience. Mass sovereignty, the sovereignty of the overwrought and emotionally solidified multitude, is for the time being a true power to compel obedience, since, while it lasts and as far as it can reach, it is irresistible. And finally, the general sovereignty of an enlightened people that arrives at concerted volition through reason and discussion is a power, through its appeal to intelligence, to call forth, that is to say, to evoke obedience.

These four modes of sovereignty are not indifferently distributed among the peoples of the earth. One does not spring up in any given commonwealth irrespective of the social psychology found there. Each is correlated with a particular development of mentality in the population, or, to speak more technically, with a particular phase of the social mind.

Personal sovereignty, or the power to command obedience,

arises where the collective mental life is little more than instinctive. The submission of many wills to one superior will is not a phenomenon characteristic of highly developed or reasoning intelligence. It is a product of the lowest modes of mental activity. It is found throughout the animal kingdom as among men. It occurs almost unconsciously, as does instinctive action of every kind. The individual who participates in it does not know why he surrenders his own mind to another more powerful. He does it as a dog crouches and fawns. In brief, the power to command obedience is a characteristic product of an ideomotor population.

Class sovereignty, or the power to inspire or to exact obedience, is correlated with a slightly higher grade of mentality, namely, the emotional or sympathetic. It is a product of sympathetic like-mindedness. The superior class, making its appeal to reverence, to sentiment, or to the love of splendor, addresses the feelings rather than the underlying instincts or the overlying intelligence.

Mass action or mass sovereignty also depends upon emotion, but not upon emotion of the merely sympathetic sort. To create mass sovereignty, emotion must be raised to a high pitch and focussed by dogmas, which are made efficient through symbols, partisan cries and fetishistic emblems. A people dogmatically like-minded for a longer or a shorter time becomes more or less fanatical, and its fanaticism, fixed upon definite objects, holds great numbers of individuals in a state that may approach a frenzied intolerance of disobedience.

That most complex phenomenon, a general sovereignty, can exist only in a community of the generally intelligent, who discuss all public questions in a rational way, and who bring about a concert of wills through an exploitation of ideas, rather than through an explosion of feeling or through uncontrolled activity of a merely instinctive sort. General sovereignty is a product of deliberative, that is to say, of rational like-mindedness.

These conceptions of sovereignty enable us to look at the phenomena of government from a new point of view. A sociological classification of governments, in turn, may reinforce our interpretation of sovereignty.

Whatever its mode, sovereignty, as disclosed by sociological analysis, is always supreme power, and not mere right. So far the fundamental concept of modern political science is a true symbol of social fact. Moreover, sovereignty is power to obtain if not always physically to compel obedience. The exercise of supreme power, however, in the actual obtaining of obedience, is not carried far for the mere sake of asserting supremacy. Obedience is desired as a means to some end, and as such it is more or less systematically required, directed and organized. The requisition, direction and organization of obedience is government.

The supreme power itself may govern, or it may delegate governing power and authority. The personal or the class sovereign does not often wholly delegate governing functions. So far as it does delegate, it usually confers authority on a relatively small number of individuals. So, whether immediate or delegated, the government of a personal or of a class sovereign is usually government by a minority of the individuals composing the given political community. The mass or the general sovereign usually does delegate governing authority and power, and usually its delegation is to a numerical majority of the political population. This majority, in turn, usually delegates the actual exercise of the governing power to a limited number of functionaries, who, however, are but the strictly subservient agents of the majority. Whether immediate or delegated, therefore, the government instituted by a mass sovereign or by a general sovereign, is usually majority government.

Besides these distinctions among governments as immediate or delegated, and as minority or majority governments, we have the familiar distribution into absolute and limited governments. In view of what has been said in criticism of the conception of sovereignty as a power to compel obedience, it is unnecessary to argue that no government, except it be instituted by mass sovereignty, can be absolute in the sense that, as power, it is unlimited. Practically all governments are limited in so far as they are modes and manifestations of power. Any government, however, may be absolute in the sense that it is or has unlimited authority. Any sovereign can vest any government that it may

institute with unconditional, unlimited authority, that is, with the right to do anything that it can do. We have seen that absolute government in this sense is substantially the thing that Hobbes had in mind when he discoursed of sovereignty. As a rough distinction, not to be pressed too far, it is scientific to think of sovereignty as supreme power, right or wrong, and of government as the supreme authorized exercise of power.

Adhering to our definitions and reservations, we observe that, when a personal sovereign himself governs or a class sovereign itself exercises governing functions, the government is necessarily absolute, since the sovereign is the source of all conditions and limitations affecting authority. But any sovereign, personal, class, mass or general, may institute a government of delegated powers, and the government may be either absolute or limited, according to the extent of the authority conferred.

If the distinctions thus far made—immediate and delegated, minority and majority, absolute and limited—exhaust the fundamental categories of governmental mode, it is obvious that there may theoretically be eight kinds of government, since there are eight possible combinations of six terms. Practically however, only four of the possible kinds are or have been great social realities, because the distinction between immediate and delegated modes of government is practically of no importance so long as the mode of sovereignty remains the same. Delegated government, we again observe, does not often appear under personal or class sovereignty, and immediate government does not often appear under mass or general sovereignty. Practically, then, as great social realities, the modes of government are these, namely: absolute minority rule, limited minority rule, absolute majority rule and limited majority rule.

Here at length we return to those problems that were the subject of reflection in my preliminary remarks about the relation of popular feeling to speculative theorizing on the subject of government. If there are four well-defined modes of sovereignty, and four well-defined modes of government, we ought to find four well-defined groups of theories or tendencies of speculation on the nature and scope of government. This, as a matter

of fact, is exactly what we do find in the literature of political philosophy, beginning with Hobbes and coming down to the present time. Until Hobbes, not all the possibilities had been intellectually exploited. Furthermore, it is easy to compare these speculations one with another, because, curiously enough, all four kinds or tendencies have been stated in terms of that interesting conception known as the covenant or contract theory of society, and each is represented by a work of enduring distinction, which has exercised great influence over both the thinking and the conduct of mankind.

The contract theory has this peculiar advantage for our present purpose, that it assumes as the starting point of political development a pre-existent general sovereignty; that is to say, it assumes as the beginning of all things political a population in which every man is his own master, and the appearance in that population of a concerted opinion, decision and will. So far the writers of the four great works are in agreement. They begin to disagree when they ask what happens next.

According to Hobbes, whose immortal *Leviathan* is an expanded and popularized edition of his almost forgotten *De corpore politico*, men in a state of nature, before the art of government has yet been invented, find life unendurable. Presumably they talk things over, because they come to an agreement by unanimous consent—an absolutely perfect phenomenon, let us remark, of general sovereignty. They agree that one of their number shall be an absolute ruler over them, and having fixed upon the individual, not by the blind instinctive method whereby the herd selects its leader, but by rational choice, they make over to him all their natural rights. He is to hold them in subjection, lay commands upon them, and create for them positive rights in place of the natural rights surrendered. Since the sovereign thus becomes the sole source of right, there can be no right of even peaceful revolution. The sovereign ruler cannot lawfully be deposed by his subjects. However, if they rebel and succeed in deposing him, their action, in virtue of its success, resolves society back into a state of nature. A new covenant may then be made and a new sovereignty be set up. Hence the practical aphorism, which has lent immense aid and

comfort first and last to both the English and the American mind, that an unsuccessful revolution is a rebellion and a successful rebellion is a revolution.

Throughout this pretty piece of logic Hobbes speaks of the instituted ruler as the sovereign. Considering sovereignty as a right to enforce obedience rather than as a power, Hobbes's mind is intent upon the transfer, by covenant, of the original or natural right of each individual to rule himself, to a sovereign who may thenceforth rule him. In such a transaction as Hobbes describes, there is in fact no transfer whatsoever of sovereignty in the sense of power. Sovereignty remains where it was at first, in the people. They have merely created an absolute minority government, nothing more, and by no possibility could they by deliberative action alienate their sovereignty. By a totally different process, of which Hobbes has no suspicion, they may lose it. Ceasing to be rational and deliberative, becoming impressionable and instinctive, they may unconsciously yield their wills more and more to a ruler of forceful personality. General sovereignty may cease to exist, and personal sovereignty may take its place.

John Locke, writing under political conditions very different from those that shaped the thinking of Hobbes, conceived of the state of nature in a radically different way, and his thinking is straight and clear at a critical point where Hobbes goes wrong. The state of nature, as Locke imagines it and as the *Treatises of Government* picture it, is by no means intolerable; it is only inconvenient. Men therefore are under no necessity to surrender their natural rights. They institute government only to achieve desirable ends which otherwise they could not secure. Therefore they never arrive at any common intention to create a personal sovereign. To their government they delegate limited authority only, establishing usually a limited monarchy. Locke, in a word, sees that in a population of reasoning beings, capable of instituting society by covenant, sovereignty inheres and must forever remain in the people. It cannot by any process of deliberative volition become personal. On another point, however, he falls down where Hobbes walks with assurance. A sovereign people may, if it chooses, create an absolute government, and sometimes it so chooses.

In the *Social Contract* of Rousseau, we have for the first time in political literature a remarkable exposition of the theory of absolute majority government. Along with it we have a definite recognition, such as we find in the pages of Aristotle, that other forms of sovereignty, class and personal, may exist, and have existed, apart from any social contract, and that under any form of sovereignty government may be absolute. The political organization of mankind, Rousseau reminds us, began in force, not in contract. Personal sovereignty and absolute minority rule were not instituted by covenant. The social contract is made, and "association" as distinguished from "aggregation" comes into existence, through a general revolt against minority despotism. The state of oppression under which men have lived has been as intolerable as any state of nature conceived by Hobbes. To escape from it, men are willing to take steps quite as radical as the absolute surrender of natural rights to a personal ruler, which Hobbes imagined. According to Rousseau, men unreservedly surrender their individual wills to the general or collective will. For all practical purposes this collective will is the will of a majority. It is absolute, and every individual must wish that it shall be absolute, because on no other terms is society, as distinguished from minority despotism, possible or conceivable. This doctrine, accepted by the French revolutionists, is accepted also in the United States as the basis of political party discipline, and is put in force by every trade-union organization.

American political philosophy in general, however, has never accepted Rousseau's doctrine of majority absolutism, and American constitutional law has abjured it. To what influence is the American principle traceable, that even the majority may exercise only limited powers of government? I mean, of course, to what is it traceable as a consciously accepted theory. As practice its causes must be found in conditions to be indicated later on. In the evolution of theory we ought to find some noteworthy work standing for limited majority rule in opposition to Rousseau's absolutism, as Locke's *Civil Government* stands for limited minority rule in opposition to the absolutism of Hobbes. Such a book there is, and while in recent years it has not often

been quoted or discussed, it comprehensively reflected American revolutionary thinking, and it exerted a deep and wide influence during the formative period of American constitutionalism. I refer to Thomas Paine's *The Rights of Man*. In substance this work is a vigorous defence of the French "Declaration of the Rights of Man," which, as all students of political history are now aware, was far more a product of American than of French political thought. Specifically, Paine's tract is a masterly arraignment of Burke's *Reflections on the French Revolution*, and in particular of Burke's contention that the people of England "utterly disclaim" the alleged fundamental rights to choose their own governors, to cashier them for misconduct, and to frame a government for themselves. Burke asserted that the English people had disclaimed these rights because Parliament, in a declaration to William and Mary, had said: "The Lords spiritual and temporal and Commons do, in the name of the people aforesaid [meaning the people of England then living] . . . most humbly and faithfully submit themselves, their heirs and posterities forever."

Such a declaration, Paine argues, can have no binding force for succeeding generations. He says:

There never did, there never will, and there never can exist a parliament of any description of men, or any generation of men, in any country, possessed of the right or the power of binding and controlling posterity to the "*end of time*," or of commanding forever how the world shall be governed, or who shall govern it: And therefore all such clauses, acts or declarations, by which the makers of them attempt to do what they have neither the right nor the power to do, nor the power to execute, are in themselves null and void. Every age and generation must be as free to act for itself, *in all cases*, as the ages and generations which preceded it. The vanity and presumption of governing beyond the grave, is the most ridiculous and insolent of all tyrannies. Man has no property in man; neither has any generation a property in the generations which are to follow. The parliament or the people of 1688, or of any other period, had no more right to dispose of the people of the present day, or to bind or to control them *in any shape whatever*, than the parliament or the people of the present day have to dispose of, bind or control those who are to live a hundred or a thou-

sand years hence. Every generation is and must be competent to all the purposes which its occasions require. It is the living, and not the dead, that are to be accommodated. When man ceases to be, his power and his wants cease with him; and having no longer any participation in the concerns of this world, he has no longer any authority in directing who shall be its governors, or how its government shall be organized, or how administered.¹

It must be admitted that this statement, as it stands, falls short of the assertion that the rightful powers of majorities, as such, are limited. But the principle is clearly implied. If not even the nation itself as a whole may rightfully bind future generations, the absolutism of the majority has no leg to stand on. Moreover, in the last analysis Paine rests his case on the axiom that "the rights of man in society are neither devisable, nor transferable, nor annihilable, but are descendable only."² This is the same axiom that is otherwise expressed in the first two articles of the "Declaration of the Rights of Man," namely:

Men are born and always continue free, and equal in respect to their rights. Civil distinctions, therefore, can be founded only on public utility.

The end of all political association is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.

In reaffirming and supporting these declarations, and especially the second, Paine is unquestionably attacking absolutism under every form and disguise. If the end of all political association is the preservation of natural and imprescriptible rights, then neither majorities nor councils nor kings can have unlimited authority. Back of all authority lie powers and rights that cannot be delegated.

This, the doctrine of limited majority rule, has in America its effective legal expression in our constitutional limitations, our system of checks and balances, and especially our two-thirds

¹ The Political Works of Thomas Paine (1826), pp. 8-9. The Writings of Thomas Paine, edited by Conway, vol. ii, pp. 277, 278.

² *Ibid.* p. 107. Conway, ii, p. 365.

and three-fourths rules governing the adoption and amendment of constitutions themselves. All these provisions are assertions and guarantees of rights of minorities and of individuals against majority power. It is the doctrine of the Declaration of Independence, but it found its strongest and best expression in an American document antedating the Declaration almost exactly as long as that document antedated the French "Declaration of the Rights of Man." This was the report on the "Natural Rights of the Colonists," made to the Committee of Correspondence by Samuel Adams, Joseph Warren and Benjamin Church at Faneuil Hall, November 20, 1772. In the first part of the report, on "The Natural Rights of the Colonists as Men," written by Samuel Adams, we read:

All men have a right to remain in a state of nature as long as they please; and in case of intolerable oppression, civil or religious, to leave the society they belong to, and enter into another.

When men enter into society, it is by voluntary consent; and they have a right to demand and insist upon the performance of such conditions and previous limitations as form an equitable *original compact*.

Every natural right not expressly given up, or, from the nature of a social compact, necessarily ceded, remains.

All positive and civil laws should conform, as far as possible, to the law of natural reason and equity.¹

Is it too much to claim that in affirmations and declarations like these, and in the limitations that our constitutions place upon government, we have an unequivocal expression of that doctrine of limited majority government which has found in later years its finished philosophical expression in Herbert Spencer's *Social Statics* and the *Liberty* of John Stuart Mill?

It is not my purpose here to urge that any one of the four great kinds of government is superior to the other three, or that any one is intrinsically more reasonable than another or has a superior warrant in natural justice. I am concerned only to point out certain conditions under which men do as a matter of fact make such assumptions as those which the great political

¹ Wells, *The Life and Public Services of Samuel Adams*, vol. i, p. 502.

theorists have made, and do in fact institute one or another of the forms of government, here described, in approximate accordance with their theoretical assumptions. I hope thus to answer the question, submitted at the beginning of my paper, whether the theories in question are substantially true accounts of great and irresistible forces.

Under what conditions then, if ever, are the assumptions that Hobbes, Locke, Rousseau and the American writers respectively make, substantially true? Through the working of what forces do men institute now absolute and now limited minority rule; now absolute and now limited majority rule?

Hobbes assumes a state of nature that is intolerable, and then he further assumes that because of its intolerableness men will unconditionally alienate their natural rights in exchange for peace and order. Now the only question that need concern us, is this: If at any time Hobbes's primary assumption is substantially true, and whensoever and wheresoever it is true, will not men, though they cannot, as he assumes, wholly surrender their natural wills, waive all question of conditions or limits attaching to the exercise of supreme power and thereby set up absolute minority government? Do not all these conditions prevail, and are not the assumptions of Hobbes for all practical purposes true, whenever, through unorganized rebellion, society is resolved into chaos and a reign of terror? Have not such episodes invariably been followed by the rule of the dictator? Have not the passions, the theories and the interests of men under these circumstances conspired to establish and to maintain absolute minority rule? Has the history of the lesser republics in America, notwithstanding their formal imitation of constitutional precedents established by the United States, been essentially different from that of the Greek and Italian tyrannies, or from the dictatorship of Napoleon?

Locke's fundamental assumption is that the state of nature is not intolerable. Holding with Hooker that men are naturally brethren and inclined to coöperate, he assumes, secondly, that they institute government not from necessity but for utility. Under such circumstances they will not make a bad bargain for themselves. It is inconceivable that they should set up or sub-

mit to any form of absolutism. Whatever government they create and tolerate will be one of limited powers. It will exist by the consent of the governed, and it will be held to responsibility and good behavior. Is it necessary to argue that the whole history of the institution known as "limited monarchy" is an all-sufficient verification of Locke's reasoning? Unlike despotisms, limited monarchies have not sprung out of social chaos. They have come into being as products of an almost imperceptible social evolution, the essential characteristics of which have been a steadily developing mental homogeneity of the people and a growing capacity on their part for spontaneous coöperation, including the practice of self-government.

Minority governments are passing away, and the assumptions that concern us as modern men are those of Rousseau and of the earlier American writers. One or the other of these groups of assumptions carries within it the prophecy of the ultimate democracy. The practical affairs of the vast populations that are destined to dwell within the territorial limits of the federal nations and empires of the future will be conducted under a majority rule that may be a form of absolutism or may be a form of liberalism. Is the ultimate democracy to be a political system wherein the individual must lose his identity through the suppression of the liberties of both individuals and minorities? Or is it to be a political system within which the individual shall be more and more clearly differentiated, and endowed with sacredly-guarded private rights? In a word, are we to have the democracy of solidarity, mechanical, irresistible, ruthless, or, rather, the democracy of individuality, complex, spontaneous, flexible—the democracy of liberty?

The fundamental assumption of Rousseau is perhaps all in all the most interesting one that has been made in political philosophy. It is so strikingly like that of Hobbes, and yet so startlingly different. As Rousseau views them, the relations that Hobbes calls political society did not originate in a covenant, but the relations that Rousseau himself calls society have that origin always. The states of the past have been not societies but "aggregations," hammered together by force and oppression. States become societies, *i. e.*, "associations" rather

than mere "aggregations," when the relations of men to one another, and between themselves and their governments, are created no longer by force, but freely by contract. So far Rousseau is historically sound. Now his assumptions begin. Men create society by compact to escape, not from a state of nature, intolerable or otherwise, but from a historically established oppression, which is quite as intolerable as the state of nature pictured by Hobbes. To escape from it men unconditionally merge their individual wills in a collective will. At this point Rousseau's thinking is identical with that of Hobbes. In a minor point also it is the same. Both Hobbes and Rousseau assume that under the social compact objecting minorities can rightfully claim no consideration. According to Hobbes they remain in a state of nature, which is a state of war, and they must accept the fate of the vanquished. According to Rousseau they prefer to remain under oppression, and they therefore may not complain if they are oppressed by any power strong enough to deprive them of liberty. Rousseau's doctrine in brief is that mankind escapes from a state of oppression into a state of association only by merging the individual will in a collective will, accepting the will of the majority as identical with the collective will, and permitting the majority to rule absolutely.

Whoever soberly reflects upon these assumptions of Rousseau's political philosophy, is bound, I think, to be startled by the examples that will press upon his mind of the practical acceptance of Rousseau's principles in modern democratic society. Not to dwell on such illustrations as our political system affords, in the unit rule in nominating conventions, in the caucus system, in machine and boss domination, let us look for a moment at the situation in that vast non-political organization, the modern industrial system. The modern trade union is perhaps the most perfect exemplification ever seen of absolute majority rule. Whatever the question, it is considered and decided without the slightest regard for individual interests or the slightest recognition of any individual right that happens to conflict with majority interests. So far as the trade unions can control the situation, no individual, not a member of the organization, is permitted to make his living as a wage-earner, and if

he comes into the organization, he enters upon terms of absolute submission to its authority. He can make no individual bargain with his employer; he can work only as many hours as the majority dictates, with only such men as the majority permits, and for only such wages as the majority agrees to.

And what justification or extenuation for all this majority absolutism does organized labor urge? What, indeed, but precisely that fact which Rousseau assumed as the original occasion of the social contract with all its consequences—the fact of oppression. The working man avers that without his organization he would, under the wage-system, be reduced to a practical and helpless slavery. And so completely and intensely does he believe this, that he looks upon a non-union workman as the natural and declared enemy of the whole wage-earning class. If a workman will not join in the social compact, merge his will in the collective will and loyally accept majority rule, he is a "scab," living and willing to live under oppression, and, as such, a being without moral rights, entitled to no consideration. When in the light of such facts we reflect how far the labor movement is shaping and will henceforth shape all political movements, we shall perhaps realize how far the majority absolutism of Rousseau has already begun to shape our democracy. The record in detail is little short of astonishing. It is hardly too much to say that Mr. Lecky's history of *Liberty and Democracy* is from one point of view little more than a narrative of the growth in the nineteenth century of majority absolutism.

What then of the assumptions—if any can be discovered—underlying the theory of limited majority rule? And what are the conditions under which we may expect to see a development of that democracy which cherishes individual liberty, believes in minority rights and desires the highest possible differentiation and perfection of individual life? One part of the answer to these questions is immediately obvious. A limited majority rule can never be established or maintained when society is breaking down into a state of "war of every man against every man," nor, on the other hand, when it is so highly organized on a basis of class distinctions that it is prac-

tically what Rousseau called it, an "aggregation" held together by force and oppression. This observation points to the underlying assumption of writers like Adams and Paine, and other American democratic theorists, and reveals a certain superiority of their insight as compared with the more ambitious philosophizing of Spencer and Mill.

The early American writers assumed that men are born "*free and equal;*" and while they doubtless meant to emphasize the equality that consists in rights, they undoubtedly had in mind also—if not always quite consciously—other kinds of objective equality, such as equality of economic opportunity and an approximate equality of ability. In point of fact such equality is approximately realized under colonial conditions. It was approximately realized in early American life. The land was rich and boundless. Labor was scarce. Any man of force and enterprise could support a family and acquire a moderate fortune. There were no great fortunes; and the state had not yet created artificial personalities of immortal life to dominate the industrial world. The population was made up for the most part of selected stocks, of men and women possessed of sufficient brains, enterprise, courage and idealism to undertake the task of exploiting a new world and creating a new human society. Approximately they were in fact equal and free, as the political writers assumed. As such they did not and could not deliberately institute or desire to maintain any form of absolute power. And there was neither "a natural state" of war, nor any intolerable oppression, other than that of a foreign yoke that might be thrown off, to compel them to establish a government of more than limited powers.

Can we doubt that in these conditions we see the only possible basis of a liberal democracy? Given homogeneity and its concomitant fraternity, given the deliberative mind and with it that general sovereignty which is the supreme expression of intelligent popular power, and given an approximate equality of abilities and of objective conditions, including economic opportunities, must we not have a limited majority rule, observing a due regard for individual rights and liberties, as inevitably as, under oppression, we must have an absolute majority rule?

Can we escape from the conclusion that if the ultimate democracy is to be liberal, cherishing true freedom and perfecting individual life, there must be a great broadening of economic opportunity,—through public ownership, or otherwise—a wholesale destruction of state-created privilege, a wider distribution of power, and a leveling up of educational attainments?

One final reflection may be offered. If the correlation between modes of the social mind and modes of sovereignty is such as has here been indicated, and if the correlation between forms of government and social conditions is substantially that which our conclusions set forth, may we not argue from assumptions to conditions as well as from conditions to assumptions? The question is one not to be answered hastily, for it is fraught with large issues. If it be true that accepted axioms of political philosophy are products of prevailing experience, there would seem to be no escape from the conclusion that, in this present age, a vast amount of actual oppression has still to be met, and must by one or another means be overthrown. For, beyond any doubt, the accepted political philosophy in this great American Republic is today not that of Adams and Paine, but is rather that of Rousseau. It behooves us then in all soberness to ask whether we have not gone over to the theory and practice of absolute majority rule for the very reason that Rousseau himself postulates when he declares that men sink their individual wills in the general will, hoping thereby to meet oppression with invincible power.

FRANKLIN H. GIDDINGS.

LEGISLATIVE REGULATION OF RAILWAY RATES

IN order to understand the attitude of the public mind in regard to legislative regulation of railway rates, the present system of competitive rates and its effects upon trade must be understood. Ever since competitive railways have existed, the actual competitive rates, as is well known, have been made by the rebate system. Under this system exactly the same tariff rates are collected from all shippers. Later, a portion of the money thus collected—sometimes five per cent, sometimes ten per cent and sometimes as much as fifty per cent—is secretly returned to some of the shippers, but not to all.

The rebate is the offspring of competition; it is never paid except on competitive business, and it is paid for the purpose of securing traffic which might otherwise be carried by a rival and competing railway. It probably originated with the railways. In the beginning it was confined to the great staples, such as grain, fuel and other commodities, on which the freight rate is several times the possible profit, of the merchant. The *modus operandi* may be illustrated by the grain trade, on which a net profit of one-half a cent per bushel is considered ample. The railway manager who desired to secure a larger share of the grain traffic would select the brightest grain merchant and make a secret agreement to pay him, say, one cent per bushel—twice an ample profit—on all his shipments. Armed with this secret contract, the grain merchant would overbid his competitors one-half a cent a bushel—their entire prospective profit—would “scoop” the business and, by reason of the great volume thus secured, make an enormous profit for himself and a large tonnage for the railway.

The present rebate system is different from the original system. The grain merchant who was first armed with the rebate soon became rich. He built terminal and line elevators, established his trade relations, bankrupted and drove out of the field all small dealers and controlled a vast volume of traffic.

Then he turned on his original railway benefactor. He refused to accept a beggarly one-cent rebate or, as a favor, any other rebate. By the right of his ability to turn trade to the rival company which he first robbed, he demanded, not one cent, but two cents, three cents, five cents or even ten cents; and the expert traffic manager who first invented the rebate had no alternative but to stand in the merchant's ante-room, with hat in hand, humbly asking upon what terms the merchant would "give" his line a share of his shipments. Thus the merchant became the rate-maker instead of the railway company.

No matter how carefully the secrecy of the rebate was guarded, grain merchants could not thus become rich and powerful without the source of their wealth becoming known. Merchants in other lines, controlling a considerable volume of traffic, saw the chance of playing one competitive line against another and making the railways bid also for their trade. And thus the present system of making rates by rebates was established.

Prior to the passage of the Interstate Commerce law in 1887, the system of making competitive rates by rebate had been so universally established over the whole country that the Senate committee which, after months of public investigation, reported the bill, said :

The practice prevails so generally that it has come to be understood among business men that the published tariffs are made for the smaller shippers and those unsophisticated enough to pay the established rates ; that those who can control the largest amount of business will be allowed the lowest rates.

To such an extent had the system developed, that substantially all the smaller men had been driven out of the grain-shipping business, and the fuel and kindred trades. The shipments of all the great staples of the country had become monopolized in the hands of the few, who had accumulated enormous fortunes based upon the absolute ruin of competitors ; and these monopolies controlled so large a volume of traffic that they, more frequently than the railways, dictated the rates they would pay.

The investigations of the Senate committee brought out some

astounding facts. It was conclusively proved that as long as the secret rebate system prevailed no mercantile or manufacturing business was safe. No matter how large a volume of traffic was controlled or how large a rebate was commanded, none could tell how soon some new combination would arise which would control a volume of traffic so much larger that it would be able to dictate, not only what rates it would pay, but how much higher rates others should pay, and what part of the rate that others paid should be turned over to itself as an additional rebate.

This precise thing has been done. Before the enactment of the Interstate Commerce law, it was proved in court that there was a combination so powerful that it compelled a railway to collect from all shippers in its line of trade a uniform rate of thirty-five cents, and to pay to it a rebate of twenty-five cents, not alone on its own shipments, but on the shipments by all its competitors. It may be safely estimated that there have been periods when the rebates paid by all the railways to the larger manufacturers and merchants have amounted, in the aggregate, to not less than one hundred million dollars yearly. Meanwhile all the smaller manufacturers and merchants were paying full tariff rates. Such were the conditions which contributed to the crushing of the smaller manufacturers and merchants, and which compelled combination.

It would be unfair to the reputation of the men who have been in charge of railway traffic to leave it to be inferred that they have been so far outwitted by their customers as to allow the revenues of their companies to be depleted to the full extent of the vast amounts which have been paid in rebates. As a rule, they have been faithful to their companies, and they have succeeded measurably in protecting their revenues by keeping the published tariff rates so high that, after paying such rebates as they could not avoid, there was enough left to keep their companies from bankruptcy and "the pot boiling."

It must be borne in mind that the cost of transportation does not come from the pockets of the manufacturers and merchants. Whatever rates they pay are added to their prices and recouped in their sales. Hence they are not concerned as to the amount, within bounds, which the railway companies receive for trans-

portation. They are only interested in relative rates; and as long as they get rebates they care not how high the tariff rates are made. Indeed, the higher the tariff and the larger the rebates, the more complete is the protection to their monopolies. Attention should be called also to the fact that, as long at least as there are any smaller competitors in the field, the monopolies must, as a rule, give to the consumer the bulk of the rebates they receive, by concessions in their selling prices, because if they do not sell cheaper than the smaller competitors they will lose their monopolies. What they will do after all competitors are out of the field is another question. But, as long as there are competitors, the masses who, when they buy food or clothing or any of the luxuries or necessities and when they build houses or pay rent, necessarily, though unconsciously, pay the railway rates, will not be materially affected by the continuance of the unconscionable rebate system. Hence it is not the masses who ultimately pay the rates who are immediately interested in destroying the rebate system. The persons immediately interested are the men of small means who have invested their moderate competencies in manufacturing or commercial pursuits, and who are being crushed out by the rebate system; the young men who desire to enter manufacturing or commercial enterprises; the fathers who hope that their sons may sometimes rise above the rank of employees. Indeed, the demand by the masses for legislative control of rates is not based upon the proposition that the average rates now actually collected are too high, but upon the outrageous discriminations now practiced by the use of the rebate and kindred devices.

If the disease has been properly diagnosed, what is the remedy? For nearly half a century the railway companies have tried to abolish the rebate system by agreement amongst themselves not to pay rebates. To destroy such agreements it has not been necessary for the large shippers even to make a protest. They have only to route all their shipments over one of the competitive lines and pay the full tariff rates. Immediately thousands of stock-exchange tickers announce the increase in earnings of the favored line and the decrease in earnings of all the others. Tick, tick, tick, up go the stocks of the favorite,

and tick, tick, tick, down go the stocks of the others. No management can stand against such attacks through the ticker. It has no alternative but to apologize humbly for the strike and agree to pay a still larger rebate in the future. The strike being thus ended, the commercial magnates have only to turn their whole traffic to the lines which have surrendered, in order to obtain full rebates on the traffic which the single line had carried during the strike under the impression that it was getting full tariff rates. It has thus been proved by experience that an agreement among the railways to maintain tariff rates and pay no rebates is not a remedy.

Would consolidation of all the railway companies into one huge corporation be a remedy? It seems altogether probable that the autocracy thus created would be strong enough to defy rebate-seekers. Whether it would destroy rebates would depend to some extent upon the personal interest in manufacturing and commercial enterprises of the railway czar and of the grand dukes, his bankers, his uncles, brothers, brothers-in-law, sons and sons-in-law. If the reign of the first czar should be benign, what would be the character of the reign of his hereditary successors? The disclosures of the insurance investigation are not reassuring.

The autocracy would necessarily be localized somewhere, probably in New York city, thousands of miles from many of the activities which are dependent upon railway transportation. It would entail upon the country evils akin to, if not essentially identical with, the evils of absentee landlordism, which has cursed Ireland, Russia and all the countries in which it has existed. Out of touch with the activities and the aspirations of distant communities, the czar would expect his managers to make present returns as large as possible, letting the future take care of itself. The ticker is always crying: "More, more!" Consolidation has already reached a stage which produces many complaints. It is alleged that no person authorized to act in redressing a wrong, or in meeting the needs of a new industry, can be reached without undertaking a journey across the continent and humbly submitting the case to the unsympathetic decision of the "unconscious arrogance of conscious power."

If, as is by no means certain, autocracy would be a remedy, the remedy may well be regarded as worse than the disease. With a grand duke in control of each of the great combinations which now command rebates, and the czar getting a "rake-off" as stockholder, or otherwise, from all, it does not seem probable that the chances of individual enterprise would be improved.

Would legislative control of rates be a remedy? It is a distinguishing characteristic of the American mind that it seeks to remedy every economic evil by passing a law. The average mind regards the enactment of the law as sufficient. The average mind is always in favor of enacting a law, but after the law is enacted the average mind is opposed to its enforcement. And when such a law has been enacted and no attempt has been made to enforce it and the evil continues to exist, the demand of the average mind is not to enforce the existing law but to enact a new law. Besides, if the statutes of this class be examined, it will be found that the average legislative mind possesses the same reverence for enactment and the same disregard for enforcement, and that, consequently, none of the statutes contains proper provisions for enforcement.

If it were not for these well-known characteristics, the fact that the Interstate Commerce law has been in existence for more than eighteen years without results would be evidence that legislation is not a remedy for the rebate system. This law forbids in the most comprehensive language the rebate and other kindred evils, but it provides no adequate instrumentalities for its enforcement. Besides, its penalties are in many cases so out of proportion to the offence that this enforcement cannot be expected. For illustration: under this law, as originally passed, if a man rides on a pass from New York city across the state line into Connecticut he commits a misdemeanor, punishable by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment in the penitentiary for not less than one year nor more than five years, or by both fine and imprisonment, in the discretion of the court, for each ride. A later amendment abolished the prison penalty and made the fine not less than \$1,000 nor more than \$20,000. The same penalties are imposed for paying rebates; and under the original law

these penalties ran, not against the railway company which paid the rebate and reaped the profits from the traffic which the rebate secured, but against the minor traffic agent, who, on a salary of perhaps \$2,500 per year, was supporting a family, and who, it might be claimed, had by a wink or a nod or by absolute silence agreed to pay the rebate. The writer was present at a controversy between a shipper and such an agent as to whether the agent had agreed to make the rebate claimed, and heard the following dialogue:

Shipper. I spoke to you about the rebate at the time.

Freight Agent. Yes, but I said No.

Shipper. I know you said No, but there was a queer look in your face which I thought meant Yes.

On this evidence the rebate was paid in the interest of future traffic from the same shipper. What American jury would fine or imprison a man for having a queer look in his face when he said No?

In one of the outbursts of public excitement which have periodically occurred since the enactment of the law, one poor fellow was convicted; but the conviction so outraged common decency that the president promptly pardoned him. Speaking from recollection, this is the only conviction under the law in the eighteen years of its existence.

Under the original law the penalties ran only against the payers of rebates, but a later amendment imposed the same penalties "for soliciting or receiving a rebate." This seemingly just amendment made it well nigh impossible to convict anybody, because the rebate crime is, as a rule, known only to the giver and the receiver. Neither party can testify against the other without incriminating himself, and this, under the provision of the federal constitution, no witness can be compelled to do. This predicament necessitated another amendment, which required both parties to testify, and avoided the constitutional provision by guaranteeing absolute immunity from prosecution for offences which such persons might disclose either to the Interstate Commerce Commission or to the courts. Since the passage of this amendment, the giver or receiver of a rebate has

only to confess to become immune and to render both the Interstate Commerce Commission and the courts powerless to enforce the penalties of the law.

Under the Elkins amendment, the penalty of imprisonment was abolished, and the fine of not less than \$1,000 and not more than \$20,000 was imposed upon the railway companies themselves as well as their officers and agents, and upon those who may solicit or receive a rebate. This amendment was passed in 1903, and no convictions have yet been made. It is a disputable question whether a railway company will be immune against penalties if it produces its books or other testimony in court. A case involving this question is before the Supreme Court.

It is needless to add that the law has had little effect upon the rebate system. At the time of the first enactment, which was during a period of intense public excitement, and at the time of each subsequent enactment, and since the president has become "perniciously active" in attempting its enforcement, there have been, not organized and effective revolutions, but just common ordinary strikes against the rebate system. Like all strikes, they have lasted only as long as the excitement has lasted.

Notwithstanding the failure of the Interstate Commerce law during eighteen years of trial, it is the conviction of the writer that it is possible to frame a reasonable and just law, with reasonable and just provisions for enforcement, which would be effective. Such a law can not, however, be draughted off-hand, with a few days or even a few months for its consideration, during a period of excitement amounting almost to hysteria.

A law intended to establish and enforce just and reasonable rates must be framed with reference to the fundamental facts which are the basis of such rates. A great deal of intelligent investigation has been devoted to ascertaining the principles of economic operation, but no investigations have been attempted in respect to the fundamentals of reasonable rates. Ask the expert traffic official what is the basis of reasonable rates and by what method they can be ascertained, and, if he regards the question seriously, he must confess that he does not know. Ask the doctrinarians who write books, and they must confess that they do not know. The fact is nobody knows; nobody

has the basis, the formula, or even a theory. Have reasonable rates relation to the cost of producing transportation, or to the interest on the fortuitous capitalization of each railway company? Is a railway company entitled to earn reasonable profits on cost of production, or reasonable interest on securities issued? Nobody knows. The people, the legislators and the courts are at sea upon these fundamental propositions. All is mystery.

If there are such things as reasonable rates, they must be based on something, have relation to something, which, by investigation, can be ascertained and demonstrated. If there are no such things, then in enacting laws which declare, as the present law declares, that "all rates shall be reasonable and just and that all unjust and unreasonable rates are unlawful," Congress simply enacts a moral rule which no one will dispute and which no one can interpret or apply. If laws of this class, making those things criminal which the day before their enactment had been regarded as lawful, are to be enforced, they must be intelligible and explicable, so as to appeal to that sense of justice which is innate in the American people.

It is probable that such an investigation as is here suggested would prove that the net rates—the remainder of the rates after deduction of the rebates—are the reasonable and just rates which should be made the tariff rates, open to all shippers alike.

It would therefore seem to be a wise procedure for Congress to provide an interstate commerce investigation committee, composed of, say, seven members, four members to be appointed by the president, and three members to be appointed by the railway companies. One member should be a sound lawyer; one a mathematician; one an experienced railway auditor; one an engineer of capacity, experienced in calculating costs of transportation; one a superintendent, experienced in the actual movement of trains and of rolling stock; one a station agent, experienced in the details of station or terminal service; and one a traffic manager, experienced in present rates. The committee should have authority to demand from the railway companies a new line of statistical facts which have never been compiled, relating to costs, and particularly to relative costs as between the different conditions under which com-

modities are transported. To give a single illustration: the committee should demand statistics showing the commodities which require, under certain conditions, the hauling of only half a ton of non-paying car to each ton of pay-freight and, under other conditions, the hauling of three or four tons of non-paying car to each ton of pay-freight. The statistics should cover all the relations of weight of car to weight of load which this illustration suggests. There are other lines of facts which, like those just cited, would need only to be mentioned to show their relevancy to the problems to be investigated.

The investigation should be systematic and thorough; it should, above all, be public; and the results should be published from time to time so as to keep the public informed during the progress of the work, and to permit public discussions in the newspapers and elsewhere. There is no corrective influence so powerful as publicity; no other agency can secure thorough comprehension of the facts and proper control of the inferences.

After, but not before, such investigations, publications and discussions—if there remained evils which such investigations, publications and discussions had not remedied—it would seem possible to frame legislation which would be recognized as just and intelligible and which would accordingly prove to be enforceable.

A. B. STICKNEY.

ST. PAUL, DECEMBER, 1905.

BALLOT LAWS AND THEIR WORKINGS

NO political movement in this country ever made more rapid progress than that which had ballot reform for its object. Starting with the passage of the Australian ballot law in Massachusetts, in 1889, the idea spread from state to state until, at the presidential election of 1892, no less than thirty-five states were using the officially printed secret ballot in some form, and now all but three are on the list. It was perhaps natural, however, in view of the particular evils which this reform was intended to combat, that its advocates should have concentrated their attention almost wholly on the prevention of trickery in the preparation of ballots and the protection of the voter in the free exercise of the franchise. While the fight was on to secure these essentials, all other aspects of the question were regarded as of secondary importance. Thus, when it was once assured that the ballot should be printed by the public authorities, that the voter should have an opportunity to mark it in private without anyone else knowing how he voted, that it should be duly checked and correctly counted once and only once in the presence of representatives of all parties, it did not so much matter in what particular fashion the ballot was printed nor how the names on it were arranged. On these points, therefore, there have always been the widest differences. It is the purpose of this paper to show not only that the form of the ballot has a very powerful influence on the results of elections, both as regards the freedom of the voter in making his choice and the accuracy with which he records it, but also to bring out, so far as possible, the precise effects produced by each variety of form.

It is pointed out by Bryce and others as one of the advantages of our system of state governments that these commonwealths can make political experiments of all sorts and profit by one another's experiences. In this matter of ballot legislation they have certainly exercised to the full their prerogative of experimenting. State legislatures are perpetually tinkering their ballot laws in one particular or another. It cannot be said, how-

ever, that they have profited by each other's successes and failures. In the changes made no general tendencies are to be observed. Indeed, in the last few years, it has occasionally happened that two state legislatures have almost simultaneously taken action of diametrically opposite effect, each one adopting with high hopes a form of ballot which the other was just abandoning in disgust. To-day, after seventeen years of experience, the diversity of legislation in this country is certainly as great as when the secret ballot was a novelty.

Take the mere matter of size and shape. The voter in Wisconsin unfolds in the booth a huge blanket sheet which in 1904 measured thirty-five inches by twenty-four. In Florida in the same year he made his marks on a narrow strip three and one-half inches wide and thirty-two and one-half inches long. From these the styles run all the way down to the sheet of hardly more than note-paper size used in Maine (10 x 8) and Oregon (8 x 12). A number of the states undertake to help out the illiterate voter by a picture gallery of party emblems, but even in this no party adheres everywhere to one design. The Socialists come nearest to uniformity, two clasped hands in front of a globe being their emblem in Alabama, Delaware, Indiana, Kansas, Kentucky, Louisiana, and New Hampshire, though a torch heads their column in Michigan, Ohio, New York, and Utah. The Prohibitionists are at the other extreme. The only emblem on which any two of their state organizations agree is the sun rising over a body of water. This emblem is used in Indiana and Kansas. They have hatchets in Alabama, a house and yard in Delaware, a phoenix in Kentucky, an armorial device in Michigan, an anchor in New Hampshire, a fountain in New York and a rose in Ohio. The Populists show nearly as much variety, using a combination of plough, pick and saw in Alabama, an anvil in Delaware, a liberty bell in New York, a plough in Indiana and Kentucky, a frame cottage and a tree in Kansas, a factory marked "producers unite" in New Hampshire, and a flag-covered box labeled "Jefferson, Jackson and Lincoln" in Michigan. An eagle is the commonest device of the Republican party and a gamecock of the Democratic; but the former party is represented by a statue of Vulcan in

Alabama, a log cabin in Kentucky, an elephant in Louisiana, and a portrait of Lincoln with the flag as background in Michigan, while the Democrats have a plough in Delaware, a flag in Michigan, and a star in New Hampshire and New York. On more important statutory details there is just as wide disagreement. The voter must use a rubber stamp in California, Indiana and Louisiana, ink in West Virginia, an indelible pencil in Maryland, a black lead pencil in New York. He makes his mark at the right of each favored candidate's name in California, Idaho, Kentucky, Massachusetts, Mississippi, Nebraska, New Hampshire, Pennsylvania, Rhode Island, Vermont, Washington, Wyoming, Louisiana, Colorado and Utah; to the left in Alabama, Illinois, Indiana, Iowa, Michigan, Montana, New York, North Dakota, South Dakota, Oregon and Ohio, and under the middle of the name in Wisconsin.

These superficial dissimilarities, however, merely reflect the diversity that exists in regard to fundamentals. The especial point to be considered first is the relative ease with which under different ballot laws a split ticket and a straight ticket may be voted. So far as this matter is concerned, the mere shape and mechanical arrangement of the ballot is by no means decisive. As will appear later, two states may have official ballots practically identical, so far as the printer's work is concerned, and yet, by reason of the statutes prescribing the method of marking, one of these may offer the greatest encouragement to the independent voter while the other puts the heaviest penalty on all but the straight party man.

For the purposes of classifying such enactments we will take in each state the hypothetical case of two voters: A, who desires to vote the straight Republican ticket, and B, whose choice falls on a Democrat for governor and Republicans for all other offices. At our imaginary election there are to be chosen ten presidential electors and ten state and local officers. In many of the states B, the independent voter, has the choice of several methods of recording his preferences. Where such choice exists, it is here presumed that he will choose the method involving the least mechanical difficulty or labor. Generally speaking, the independent voter is the intelligent voter, and after

informing himself of the provisions of the ballot law in his state, he will save himself unnecessary trouble by taking the shortest cut.¹

The commonest ballot is the party-column type, modifications of which were used in twenty-three of the forty-five states at the last national election. These all agree in having the full ticket of each party printed in a single column, usually so arranged that all candidates for a given office have their names in the same horizontal line. In voting such a ballot five different methods are in vogue.

1. A makes a separate mark opposite each of the twenty names in the Republican column. B makes nineteen in that column and one opposite the Democratic nominee for governor. This is the rule in Montana.

2. A makes a single mark at the head of the Republican column. B does the same, and makes an additional mark opposite the name of the Democrat for governor. This is the rule in California, New York, North Dakota, Washington, South Dakota, Illinois, Ohio, Wisconsin and Kentucky.

3. A makes a single mark at the head of the Republican column. B does the same, then draws a line through the name of the Republican candidate for governor, and makes a mark opposite the Democrat. This is the rule in Michigan, New Hampshire, Utah, Wyoming, Idaho and Alabama.

4. A makes a single mark at the head of the Republican column. B makes twenty marks, one opposite the Democrat for governor and nineteen opposite the names of all other officers in the Republican column. This is the rule in Iowa, Louisiana, Kansas, Vermont and Indiana.

5. A designates the Republican column (either by a cross or by drawing a line down the others). B does the same, and then inserts the Democratic gubernatorial candidate's name in that column, either by pasting or by writing it in, although that

¹This is not necessarily true, however. In New York, for instance, some questions regarding the meaning of the ballot law have never been judicially determined, and it is said that for this reason many lawyers invariably adopt a method of splitting their tickets which, while more difficult than one of those prescribed by the directions of the ballot, is certainly authorized by the dubious phraseology of the statute.

name is already printed on the ballot in an adjacent column. This is the rule in Delaware, Maine and West Virginia.

6. The next form of ballot is virtually the foregoing one cut into strips. The voter receives a bundle of official ballots, one slip for each party. A deposits the Republican slip without alteration. B pastes or writes in the name of the Democrat for governor. This is the rule in Connecticut, Missouri, New Jersey and Texas.¹

7. Georgia, North Carolina and South Carolina are the three states which have no official ballots. The candidates or party organizations usually prepare and distribute the ballots, which may be written or printed or partly written and partly printed. A and B can prepare the kinds they want in any way they please, conforming merely to certain regulations regarding size and quality of paper.

The fourteen remaining states arrange the names on the ballot by offices instead of by parties. There are six varieties to be noted.

8. The names of candidates for each office are placed within a separate "box" or printed margin, arranged in alphabetical order, and each followed by the name of the party making the nomination. A and B must both pick out and mark their candidates one by one. (They will make eleven marks apiece if there is provision for voting all ten electors at once, and twenty marks apiece if there is not.) This is the rule in Massachusetts, Rhode Island,² Oregon, Nevada and all but eleven counties of Maryland.

9. The names within the "boxes" are not arranged alphabetically, but in the same order of parties for each office. The party name is printed after each name. Thus A finds the Republican candidates invariably first on the list (or second, as the case may be), and B can follow the same uniform rule except as regards the governorship. This is the rule in Minnesota.

¹The Texas legislature has since passed a law providing a ballot of the party-column type to be voted by striking out the names of all candidates except those favored.

²The legislature of 1905 abolished this in favor of a ballot of type three.

10. The names are not in alphabetical order, and those for each office are merely printed in a close group without the ruled line to separate them. Instead of marking opposite the desired name, the voter strikes out all except that one. A and B thus make the same number of erasures. This is the rule in Arkansas and Virginia.

11. The names are grouped by offices, but the party of each is not designated. This is the rule in Florida, Mississippi, Tennessee and eleven counties of Maryland.

12. There is a "box" for each office, the names are arranged in alphabetical order with party designation, but across the top is printed, "I hereby vote a straight _____ ticket, except where I have marked opposite the name of some other candidate." A simply writes the word "Republican" in the blank. B does the same, afterwards making a mark opposite the name of the Democrat nominated for governor. This is the rule in Colorado.

13. There is a "box" for each office with party designation, but somewhere on the ballot a space is provided for voting a straight ticket of each party. The electors are so arranged that all can be voted by one mark. A makes one mark in the straight ticket space. B makes eleven marks, picking out his candidates from each party group. This is the rule in Nebraska and Pennsylvania.¹

Thus at one extreme are the states in which the independent voter in the hypothetical case is put to twenty times as much mechanical labor in voting as the hide-bound partisan, and at the other extreme, those in which the two are put to exactly the same amount of trouble in voting. Iowa and Montana have ballots which look as much alike as the pages of two conserva-

¹ Some of the changes of the last ten years are indicated by comparing the above list with the classification contained in the *Nation* of January 4, 1894. Ballot-reform laws had then been passed in thirty-six states of which thirty-three had blanket ballots. "Alphabetical order:" Alabama, Arkansas, California, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, Wisconsin, Washington, Wyoming. "Party group and name:" Illinois, Iowa, Kansas, Maine, Missouri, Pennsylvania, West Virginia. "Group, name and emblem:" Colorado, Delaware, Indiana, Kentucky, Maryland, Michigan, Ohio. "Separate ballots:" Connecticut, New Jersey, New York.

tive newspapers, yet they are at opposite poles as regards the premium they put on straight ticket voting.

The Colorado ballot, but for a single printed line, would be extremely like that of Massachusetts, yet, it really stands on an exact parity with New York's or Ohio's as regards the ease of split ticket voting. Pennsylvania's ballot does not look like that of Kansas, yet, on analysis they are seen to differ essentially only in the provision which lets the Pennsylvanian vote for all the state's presidential electors at once, by a single X mark.

To determine just how much influence these differences actually have on the result of elections, it is only necessary to examine the returns classified on the basis here outlined. In only a few states is a report made of the total of straight and split tickets voted, but there are several ways in which the proportion can be approximately ascertained. The method adopted in preparing the tables which follow, may best be explained by an example. In Kansas, for instance, in 1904 the Democratic candidate for governor had 38.52 per cent of the combined Republican and Democratic vote, while on the presidential vote of the two great parties the Democratic percentage was only 28.67. The difference between these figures, 9.85 per cent, may be taken to represent the net amount of independent voting as between the presidency and governorship. Obviously the result would be the same if figured from the Republican percentages. In this instance the Democratic state candidate who ran farthest ahead of his ticket was the nominee for state treasurer with 45.18 per cent of the combined vote of the two great parties. The insurance superintendent had the smallest proportion, 37.68. The difference between these is 7.5 per cent. A third figure has been obtained in every case by comparing the vote for the minor state offices, omitting governor, and a fourth by subtracting each party's worst from its best—in this case, insurance superintendent and presidential elector, giving 16.59 per cent.¹

¹ It is evident that by this method the amount of independent voting can never be overstated, while it may be materially understated in some cases. For example, in

The groups include every state which chose any state officers at the same election with presidential electors in November, 1904, except in a few southern states where there was practically no opposition party.

I. Each candidate to be marked separately, unless all are on one party ticket, when a single mark suffices:

	PRESIDENT AND GOVERNOR	WIDEST RANGE	STATE OFFICES	MINOR STATE OFFICES
Iowa		1.10	.34	.34
Louisiana	1.99	.99	.29	.29
Kansas	9.85	16.51	7.50	7.50
Indiana . . . . .	.80	.80	.43	.06
Average	3.88	4.85	2.14	2.04

II. A name to be written in or pasted for every candidate voted not on one party ticket:

	PRESIDENT AND GOVERNOR	WIDEST RANGE	STATE OFFICES	MINOR STATE OFFICES
Connecticut	3.43	3.43	2.96	.88
Missouri	5.25	5.25	4.36	1.23
New Jersey	3.56	3.56		
Texas	6.96	6.96	.51	.05
Delaware	1.77	1.77	.67	.17
West Virginia	5.27	5.27	3.46	.39
Average	4.24	4.39	2.39	.54

III. An additional mark and an erasure to be made for every candidate voted not on one party ticket:

	PRESIDENT AND GOVERNOR	WIDEST RANGE	STATE OFFICES	MINOR STATE OFFICES
Michigan	17.01	17.01	12.58	2.07
New Hampshire . . .	2.24	2.24		
Utah	7.92	7.92	4.14	.73
Wyoming	10.34	10.34	2.70	1.76
Idaho	4.91	4.91	4.90	1.49
Average	8.48	8.48	6.08	1.51

IV. An additional mark to be made for every candidate voted not on one party ticket:

states like Missouri and Wisconsin, where ticket-splitting took place, so to speak, in both directions, the figure here will represent merely the net result and not the total amount of such selection.

	PRESIDENT AND GOVERNOR	WIDEST RANGE	STATE OFFICES	MINOR STATE OFFICES
New York	3.08	3.08	1.88	1.05
North Dakota	4.54	4.54	2.63	1.45
Washington	22.63	22.63	11.39	6.24
South Dakota	3.29	3.29	1.07	.22
Illinois . . . . .	.45	2.55	2.10	2.10
Ohio		2.00	.12	.12
Wisconsin	12.99	12.99	6.23	1.96
Colorado ¹	9.43	9.43	5.68	2.42
Average	8.06	7.30	3.88	1.94

V. Each candidate to be marked separately in every case:

	PRESIDENT AND GOVERNOR	WIDEST RANGE	STATE OFFICES	MINOR STATE OFFICES
Massachusetts	15.00	15.00	13.90	5.92
Rhode Island	11.87	11.87	9.83	6.28
Minnesota	31.07	31.07	20.29	11.32
Montana	18.38	18.38	9.60	3.95
Nevada		14.27	.87	.87
Average ²	19.08	18.11	10.89	5.66

¹ Computed from returns as originally certified. The throwing out of precincts in the Adams-Peabody contest would affect the absolute but not greatly the relative pluralities.

² For the sake of comparison the notable instances of independent voting in past years may be computed in the same way. In 1888 when Hill was elected governor of New York, though Harrison got the electoral vote of the state, the difference was only 1.31 per cent. In 1892 when Massachusetts elected Russell governor while supporting Harrison, the difference was 3.8 per cent. In 1900, the state of Washington elected Rogers governor while choosing McKinley electors, the difference being 6.2 per cent. These were the only cases in the last five elections of any state's choice of a governor of one party and electors of the other. Lind in Minnesota was beaten for governor in 1900 by 2,470, though McKinley carried the state by 76,963. This meant 12.4 per cent of ticket-splitting. This banner performance was surpassed in five states in 1904. The results of the 1905 election in New York City also deserve mention. The election of Mr. Jerome for district attorney, though he was independently nominated and his name did not appear in any of the regular party columns, was an event probably without precedent in any community using a ballot similar to that of New York. The method of computation used in the tables can not be applied to this case. However, nearly every Jerome vote must necessarily have been on a split ballot, and his percentage of the total vote for district attorney, 38.6, may serve as an approximate measure of the discrimination exercised in this remarkable election. At the same time the 13,348 votes received by the Republican candidate who had formally withdrawn were monuments to the influence of the straight-ticket circle. Jerome's own large vote was only made possible by lavish advertising to show how a split ticket might be voted in his favor.

The most important point brought out by these figures is that, in the states where the marking of each individual candidate is compulsory, the voters—whichever column be taken as the basis of comparison—have exercised more than twice as much discrimination among candidates as in any other group, and from four to ten times as much as in the lowest group of each column.

Next after these stand the two groups of states in which, while the straight ticket voter is favored by being allowed to record his choice at a single operation, the split ticket voter is not put to the necessity of marking his presidential electors one by one. There is no considerable difference between the figures for the two groups, however. It does not apparently act as a deterrent to require that the voter who marks a name outside of his chosen column must also obliterate the corresponding name in that column. In fact it seems to work the other way. This can be explained on psychological grounds. It simply "seems natural" to scratch out the name of the rejected candidate and makes assurance doubly sure that the voter's intent will be understood and the vote as marked correctly counted. This consideration appears to compensate fully for the additional labor involved.

Of lowest rank in respect to the amount of independent voting are the group of states which require writing in or pasting of names when the voter favors nominees of more than one party, and the group which, while letting off the straight ticket man with one mark, impose on the independent the drudgery of marking every presidential elector as well as state and local candidates. One very important difference is to be noted, however, between the figures for these two types. While a fair amount of independence is shown by voters in the former group it is almost solely with reference to one office, the governorship. The discrimination among minor state offices is relatively much less than in any other group. In the split-ticket mark-all group, though in only one of the four states was there any considerable amount of independent voting, there was proportionately more difference as regarded these minor state officers. Both these forms put a somewhat heavy penalty on independent voting, the

difference being that in one case the penalty is cumulative, while in the other it is not. For the Missourian who picks out a Republican ballot, it is exactly twice as much trouble to vote for two Democrats as to vote for one. On the other hand, for the Iowa Republican, while it is a troublesome matter to vote for any Democrat at all, there is no extra difficulty in voting for two, three or four. In the first case there may be many voters who scratch one or two important names on their party ticket, but few who will do more. In the latter, though the number who vote split tickets at all may be small, a good proportion of these, having taken the plunge, make the utmost use of their opportunity by scrutinizing all the candidates closely.

These figures furnish no evidence that the arrangement of names in alphabetical order when grouped by offices has any effect to encourage the disregarding of party lines. Nor is there anything to show that the group by offices itself—in spite of the general impression to that effect—is any more favorable to independent voting than the party-column plan, provided the rules for marking are the same. The data here are admittedly insufficient to warrant any general conclusion, but it is worthy of note that the state which stood at the head of the list in respect to independent voting in 1904 was one in which the alphabetical order did not prevail, and the one which stood third in "greatest range" used the party column, though without the straight ticket circle.

It is of course, true that the states in which a strong sentiment of non-partisanship exists are the ones likely to adopt ballot laws which will encourage independent voting and *vice versa*, so that what appears as effect may be in reality partly cause. Moreover it is self-evident that, unless there is some reason for preferring certain particular nominees of different parties, voters will not have occasion to split their tickets, no matter how easy that process is made, while if there is a burning issue, they will not be hindered by any petty difficulties. But the comparison by groups minimizes the force of these objections. No one probably, if asked to name the five states of most independent proclivities in politics, would pick out those placed in the last group, yet the lowest of these makes a showing for discrimination in

voting which is only equalled by three others outside of this particular group. Only that number, in fact, can be said to be important exceptions in the groups where they are placed. Were Washington, Michigan and Kansas to be omitted, the results of the tabulation would be still more striking.

Of special significance is the fourth column, in which is shown the degree of discrimination exercised by voters in filling the minor state offices. The head of the state ticket naturally has a very prominent place in the campaign, and his popularity or unpopularity alone is likely to affect largely the first three figures which represent the independent voting of a state. As a matter of fact, in all but one of the states in which that office was to be filled, in 1904, the candidate for governor was either the most or the least successful of his party's state candidates. The scanning and selection of the lists of less important officers, however, is as sure an indication as could be devised of really intelligent and independent voting. Moreover, as regards these tickets, there is no reason to suppose that there would be much difference in the material to choose from in the various states. It is certain that everywhere some men on the state ticket will be better than others. That the differences are more pronounced in this than in the other columns is strong proof of the important part which the ballot itself plays in inducing voters to disregard party lines in recording their preferences.

Under a popular government we can hardly do otherwise than assume that the voter goes to the polls with some sort of distinct idea in regard to the candidates to be voted for. It is plain, however, that some of his preferences are so slight or so vague that he will record them if it is convenient to do so, but waive them if he is put to extra trouble on their account. Those who believe in the straight-ticket circle or square always assert that it is merely a convenience to the straight-ticket man and not in any sense a deterrent to the independent. They are fond of pointing out the almost ridiculously small amount of labor which the voting of even the most complicated ticket involves.¹ The important effects produced, as we have seen,

¹ "It cannot reasonably be said that because one voter may more quickly prepare

by apparently trivial differences, are seemingly to be explained by considering the voter's fear lest his ballot be invalidated by an error in marking it. In a state like New York party watchers at the polls are provided with little books describing the various combinations of marks which may and may not be counted, and many cases arise in which determination is a difficult matter. Unfortunately statistics of the number of rejected ballots are available in very few states, and even when published cannot fairly be compared by reason of the different provisions governing the throwing out of ballots.

Other things being equal, many more votes will be thrown out in a state where any technical error invalidates than one where the rule is to count whenever the voter's intent can be determined.¹

Some indications on this point, however, are furnished by the returns for presidential electors in the several states. As commonly published the "presidential returns" are made up simply by taking in each state the vote for the highest elector of each party. How much higher this vote is than that for the corresponding lowest elector is seldom noted in the almanacs and often not even in the officially published returns. Yet there is

his ballot than another the election is not free to both alike. Each votes as freely as the other, but in doing so the one who, in a spirit of independence and in the exercise of his absolute right to be independent, makes up his own ballot must and does consume more time than the other. This, however, is no interference with his freedom as an elector. It is the very freedom of the election that enables him to mark his ticket just as he pleases, or to make it up without regard to any name that may appear as a candidate on the ballot handed to him." (Majority opinion Pennsylvania Supreme Court, on test of constitutionality of party square, May 8, 1905.) "It may well be doubted whether the practical workings of the circle have been, as so many assume, to restrain voters from picking and choosing their candidates." (Comment of an important western newspaper.)

¹ Estimates of state authorities run from "a fraction of one per cent" in New Hampshire, and one per cent in Wisconsin, to three per cent in Iowa and five per cent in West Virginia. In Connecticut, where 191,829 were checked as having voted, 1,330 general and 777 local ballots were rejected for all causes. In Rhode Island, of 74,460 ballots cast, 898 were classed as "defective" for governor. There were 2,903 void or rejected ballots out of 438,179 in New Jersey. The dissenting opinion of Justice Dean in the Pennsylvania "party square" case states that "in the general election of last year (1904) more than 100,000 voters in Pennsylvania cast defective ballots."

almost always a considerable gap. Occasionally in a close election it is so wide that the leading elector of the minority party gets in ahead of the "tail-enders" on the winning side. In Maryland last year, the first Democratic elector came in ahead of all but the first Republican.

The returns from all but three states show that of the voters who wanted Theodore Roosevelt for president, the astonishing number of 43,650 failed to vote for the full number of Roosevelt electors to which their states were entitled. Democrats to the number of 24,168 similarly missed one or more of their party electors, as did 2,982 Populists, 3,479 Prohibitionists, and 5,411 Socialists.¹

The presidential elector under our system has absolutely no discretionary power and his personal qualifications cannot in any possible way affect the coming national administration. The worst a bad man in that position could possibly do—and none has ever done it yet—would be to let himself be bought off or desert. Even then it would not help matters to scratch his name at the election. It is a nice point of ethics whether the voter, having made up his mind whom he wants for president, should vote against any of the agents who are selected to record his vote, no matter who they may be. Yet the habit of "scratching" individual electors is more common than is generally supposed. Sometimes a popular elector of one party gets the complimentary votes of friends on the other side. More often personal spite is vented by leaving off a name or two, while rather a common method of "rebuking" a party which the voter feels bound to support with mental reservations, is to leave off the name of the first elector.

How many of the 79,690 voters who omitted some of their party's electors from their ballots did so from such reasons, and how many from accident, may be seen by a brief comparison. In the following tables are given the difference between the highest and lowest electors of each party in each state, and the percentage which that difference is of the total party vote.

¹These figures are respectively .579 per cent of the total Republican vote of the same states, .493 of the Democratic, 2.627 of the Populist, 1.343 of the Prohibitionist and 1.384 of the Socialist.

1. Names of electors so grouped on the ballot that one mark votes them all.

	REPUBLICAN	DEMOCRAT	PROHIBITION	POPULIST	SOCIALIST
Massachusetts	68 .03	96 .06	15 .34	17 1.3	24 .17
Rhode Island.					
Minnesota	586 .27	1,249 2.26		70 3.33	268 2.29
Nebraska	703 .5	1,045 1.9	68 1.1	179 .09	65 .9
Pennsylvania	807 .09	296 .08	81 .2		22 .1
Maine ¹	20 .03	19 .07			
Vermont	40 .09	13 .13	4 .5		5 .58
North Dakota	73 .13	32 .22	4 .36	6 3.74	15 .72
Total	2,297	2,750	172	272	399
Party vote	1,659,943	688,740	54,782	26,973	61,431
Per cent. . . . .	.138	.399	.313	1.007	.649

2. Full list of party electors is printed on the ballot to be cast, and must be altered by scratching out, writing in or "stickers," in order to discriminate between electors.

	REPUBLICAN	DEMOCRAT	PROHIBITION	POPULIST	SOCIALIST
Delaware	17 .07	18 .09	3 .5		3 2.1
Connecticut	80 .07	34 .04			
Georgia	1,387 5.74	41 .05	3 .43	264 1.17	1 .52
Missouri	426 .1	436 .1	66 .9	31 .7	159 1.3
Texas	2,019 3.94	423 .35	141 3.52	83 1.02	64 2.28
West Virginia	46 .03	55 .05	291 6.3	240 72.7	4 .2
New Jersey	52 .02	47 .02	13 .19	2 .069	9 .09
Total	4,027	1,054	517	620	240
Party vote	910,601	909,528	25,699	40,360	31,845
Average . . . . .	.442	.115	2.011	1.534	.754

3. Names of electors in groups. Voter crosses off all except those he wishes to vote for.

	REPUBLICAN	DEMOCRAT	PROHIBITION	POPULIST	SOCIALIST
Arkansas	322 .68	367 .57		23 .99	
Tennessee	699 .66	1,321 1.00	58 3.05	64 2.56	70 5.00
Virginia	12 .03	31 .04	1 .07		1 .5
Total	1,033	1,719	59	87	71
Party vote	200,109	276,735	4,255	5,078	3,388
Average . . . . .	.516	.621	1.400	1.705	2.088

¹ Maine and Vermont chose only electors in the November, 1904, election; and as a mark in the straight ticket space voted all these at once, they are classified with the

4. Square for voting all electors at once opposite candidates' names, but in the same column with individual elector squares, and of same appearance.

	REPUBLICAN	DEMOCRAT	PROHIBITION	POPULIST	SOCIALIST
Maryland	3,803 3.6	2,172 1.9	213 71		102 4.6

5. Each individual elector must be marked in all cases.

	REPUBLICAN	DEMOCRAT	PROHIBITION	POPULIST	SOCIALIST
Oregon	804 1.3	343 1.9	35 .9	42 5.5	204 2.7
Montana	1,127 3.2	438 2.00	13 3.3	60 4.	240 4.2
Florida	1,650 19.9	900 3.4		689 43.	1,096 47.6
Mississippi	267 8.34	134 .25		108 7.7	63 1.62
Total	3,898	1,815	48	899	603
Party vote	106,890	119,716	4,141	5,303	16,025
Per cent.	3.59	1.51	1.15	16.96	10.01

6. All voters of split tickets mark the electors individually.

	REPUBLICAN	DEMOCRAT	PROHIBITION	POPULIST	SOCIALIST
Iowa	2,150 .69	415 .27	153 1.32	255 10.62	237 1.60
Louisiana	113 2.2	136 .2			15 1.5
Kansas	1,866 .87	649 .73	204 2.7	93 1.4	234 1.5
Indiana	6,060 1.6	3,957 1.4	763 3.2	116 4.8	272 2.3
Total	10,189	5,157	1,120	464	763
Party vote	892,294	555,994	42,342	10,807	43,339
Per cent.	1.14	.92	2.64	4.29	1.75

7. To mark all electors is one of the ways, but not the only way, of voting a split ticket.

states having a special circle for the group of electors. Massachusetts alone in this group provides no space for voting the electors individually. To "scratch" any one, a line must be drawn through his name, and the name of the preferred candidate written on the corresponding line in a blank "box."

	REPUBLICAN	DEMOCRAT	PROHIBITION	POPULIST	SOCIALIST
Alabama . . .	213 .94	96 .12	68 11.14	69 1.38	47 5.53
California . . .	1,447 .7	476 .5	51 .7		361 1.2
Idaho	452 .9	279 1.5	14 1.4	2 .6	81 1.6
Illinois	2,813 .4	2,187 .6	478 1.4	150 2.2	577 .8
Kentucky . . .	2,855 1.4	3,430 1.6	190 2.9	201 8.	153 4.2
Michigan . . .	3,556 .9	1,483 1.	139 1.	8 .6	136 1.5
New Hampshire.	4 .007	3 .009	2 .26	2 .25	27 2.45
New York . . .	365 .04	159 .03	37 .17	16 .21	40 .1
Ohio	3,014 .5	378 .1	214 1.1	14 1.	469 1.3
South Dakota. .	560 .7	157 .7	34 1.1	15 1.2	26 .8
Utah	238 .38	71 .21			18 .31
Washington . .	1,091 1.07	160 .57	40 1.2	19 2.8	87 .87
Wisconsin . . .	1,474 .5	358 .3	49 .5	33 6.2	144 .5
Wyoming . . .	31 .10	58 .65	22 10.4		12 1.1
Colorado . . .	350 .25	206 .20	12 .35	111 13.5	34 .78
Total	18,453	9,501	1,350	640	2,238
Party vote . . .	3,732,531	2,245,720	127,138	28,594	243,819
Per cent. . . .	.494	.426	1.062	2.237	.917

The aggregate differences between highest and lowest votes for Socialist Labor electors was 484 or 1.507 per cent of their total in the entire United States.

So far as this slighting of individual electors is deliberate and intentional, it will be seen to follow the rules already observed in the vote for other offices. Thus we have, to begin with, two groups in which the easy and natural thing is to vote for all electors at once. Many more vote against unpopular electors in the states where this may be done by crossing off a name or two, than in those where it involves a more complicated process. Yet it cannot be doubted that mistake and not intention is responsible for all but a small part of the difference which commonly occurs between a party's highest and lowest elector. If it were intentional, the elector with the largest vote would be as likely to be found in one place as another on the ballot. As a matter of fact out of thirty-five states for which these data are at hand, the Republican elector having the largest vote was the first on the list in thirty and the second in one. The leading Democratic elector was the first on the list in twenty-two states and the second in five. The leading Prohibition elector was the first named in twenty-one states out of twenty-nine and the second in two, the leading Populist the first in fourteen states

out of twenty-three and the second in five others, while the leading Socialist elector was the first named in twenty-eight out of thirty-three states and the second in two others. Similarly, the elector with the lowest vote was the one whose name came last or next to last twenty-four times in the Republican column, fourteen in the Democratic, eleven in the Populist and nineteen in the Socialist. Often the vote tapers down with the greatest regularity between. Either because they suppose that to mark a few names carries all, or because they do not count correctly, or because they tire before the end of the list, many thousands of voters have certainly stopped marking somewhere on the way. The length of the list of electors, of course, varies from three to thirty-nine, but this seems to have very little effect on the number who thus fail to reach the end of it.

If we assume that the figures in the first group represent the proportion of voters who will "normally" vote against electors of their party whom they do not like, then we find that, in the ballots most inviting error by their requirement of marking every name, twenty-four times as many Republicans, proportionately, failed to vote for the full list, four times as many Democrats and Prohibitionists, fifteen times as many Socialists and sixteen times as many Populists. Much of this difference is certainly due to downright blundering. We have additional proof here of the degree to which the form of ballot influences the vote. Thus the states which have ballots designed to encourage independent voting on offices in general, but to deter favoritism among electors of the same party, rank among the highest in the former comparison and among the lowest in this. In some instances, there is especial excuse for error. In Maryland the so-called "trick" ballot grouped the electors in a "box" with the names of the presidential candidates on the first line. A mark in the space opposite their names was counted for all eight electors. The most common mistake in 1904 was for a voter to mark after the name of elector number one, thinking that this would be counted for all. More Republicans proportionately did this than Democrats, with the result that not only was the vote of the state divided, but seven-

eighths of it went to the party which really mustered the fewer voters. Interesting, too, are the Florida and Mississippi figures. In these states the names of electors were simply printed in a column, with no party designation, and in Florida even unseparated, so that there was nothing to show where one party's candidates ended and the next began. As the Democratic electors were named first in these states, it was comparatively easy to mark down to the proper point in voting that ticket. But an ignorant voter might well be puzzled by the instruction to mark say, from the eleventh to the fifteenth inclusive. Hence the extraordinary proportion of error. These ballots, which, as our original classification shows, belong to the same general division with the purest Australian types, serve the partisan purpose in these cases of bewildering the illiterate negroes.

A person of any intelligence, who knows how to read and has taken the trouble to find out the names of the candidates, ought seemingly to have no difficulty in casting his vote correctly even with the most confusing of these forms. But the foregoing figures show, if nothing else, the proclivity of the American voter to make mistakes where there is any possible excuse for his doing so. It is this which makes it impossible to say of any type of ballot, "This is the best, and every community should adopt it." We know that the straight ticket circle discourages independent voting, which is the same thing as saying that it improves the bad candidate's chances of being "pulled through" by the popularity of the good candidate of his party. But in letting the illiterate man vote, we assume that he is competent to decide at least which party he wants to put in power. The party circle with the picture over it may conceivably in some communities be the only system under which he can vote without blunders. A state which contains many such illiterates and is determined to let them vote must therefore decide, before fixing on any form of ballot, whether in view of its peculiar conditions haphazard voting or hide-bound voting is the lesser evil.

Except in Maryland the differences between electors of the same party had no influence on the results in 1904. In fact, so far as this particular election is concerned, the foregoing

table is hardly more than a political curiosity. Yet such differences might easily become a factor of great importance in a close election. The carelessness or caprice of voters has seven times in the last four elections resulted in dividing the electoral vote of a state. The highest Democratic elector came in ahead of the lowest Republican in Ohio and in California in 1892, and in California and Kentucky in 1896, while Oregon chose one Populist elector in 1892 and North Dakota one Republican, one Democrat and one Populist.¹ Should this condition occur again in an election as close as that of 1876, it would be the deciding factor. If in 1896, for instance, Mr. Bryan had carried the four states of Illinois, Indiana, Delaware and West Virginia he would have been elected president by one vote, simply because the Republicans of California and Kentucky had failed to support all their party's electoral candidates. The possibility that the presidency might be disposed of by such a miscarriage of the popular will is a serious objection to our present electoral system.

The secretary of state of an important state writes:

The practice of printing the names of electors is a bad one. The constitution of the United States provides that the electors shall be appointed in such a manner as the legislature of each state shall determine. The voters should vote directly only for the candidates for president and vice-president, and the state returning board should give to each elector of the party as many votes as were received by the candidates for president and vice-president.

The suggestion is at least interesting.

As regards the general difficulties with electoral machinery, the remedy oftenest discussed is the use of the voting machine. The two conspicuous merits of this contrivance are that it disposes absolutely of delays and disputes in the counting of votes and, if properly constructed, renders it mechanically impossible to vote incorrectly. The careless voter, for instance, cannot

¹ In California in 1892 the plurality of the highest Republican elector over the highest Democrat was but .24 per cent of the Republican's vote. In Ohio that year, the corresponding difference was .26 per cent, in California in 1896 it was 1.31, and in Kentucky in that year .12.

indicate two candidates for the same office. But after these great advantages are granted, the machine is, after all, nothing but a blanket ballot in which a lever, button or key takes the place of the cross-mark or other stamp. Except those involving "stickers" or the writing-in of names, any of the forms of ballot now in use in the United States may be embodied in a voting machine. The conclusions drawn from the figures here presented are therefore applicable just as much to the arrangement of the voting machine as to the arrangement of the paper ballot. If it is twenty times as much trouble to vote a split as a straight ticket, few persons are going to choose the former, whether the unit is a pencil mark or the movement of a celluloid button. The fear of making a mistake that will invalidate entirely is, it is true, removed, and this should give the voter a greater sense of freedom, but the argument of least resistance applies nevertheless. It is thus very important that a locality which proposes to install voting machines should secure a kind that will conform to the sort of ballot found to be adapted to the needs of that place. A state accustomed to a ballot which requires the marking of every name is simply undoing its good work if it installs voting machines which have a straight party lever or knob. It is virtually letting the designer of the machine nullify the provisions of the election law.

This is a period in which the importance of little things is being more and more recognized. Advertising experts have learned to estimate the psychological value of various typographical arrangements. Railroad companies have conducted expensive tests to determine what style of type in their timetables will be read with the minimum of mistakes and thus save their patrons from missing trains through misreading the starting time. At least as careful attention should be given to the make-up of that most potent of all sheets of paper, the ballot.

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LAND SYSTEM OF THE CONNECTICUT TOWNS.

WHEN the inhabitants of the three river towns of Hartford, Windsor and Wethersfield left Massachusetts for their new homes upon the banks of the Connecticut, they settled upon territory to which they had no title, except a squatter's right of possession. In the absence of any royal charter or grant from the New England Council, the colonists early turned their attention to strengthening their right of possession by purchasing the claims of the native proprietors. There is no evidence that the founders of Connecticut accepted the view of Roger Williams, that a valid title could only be obtained by purchase from the Indians, but they possessed themselves of the native title as the only one that could be obtained under the circumstances. Unquestionably the colonists were also prompted by a spirit of fairness towards the Indians in paying them for their land, for even after the granting of the royal charter in 1662, when the title of the colonists to their land no longer rested upon occupation and purchase, there was uniform action in extinguishing the Indian title by purchase and treaty.¹

It was clearly recognized that much confusion would result from indiscriminate purchases of land from the natives by individuals. The Indians were none too careful about selling the same land several times to different purchasers, and many conflicting claims resulted.² To avoid such confusion of titles, the colonial authorities attempted to restrict the purchase of land from the Indians to those who had received the consent of the General Court.³ These orders of the General Court, however, seem to have been "more honored in the breach than in the observance." It is true that there are instances where persons or groups of persons applied to the Court for authority to pur-

¹ Col. Rec., II, 151, 254; IV, 305, 526.

² Lared, Hist. of Windham Co., I, 195, 150.

³ Col. Rec., I, 402; II, 151; IV, 305.

chase land from the Indians,¹ but unauthorized purchases undoubtedly continued, and it must be confessed that the action of the General Court would incline one to believe that it did not consistently enforce its own orders.² By the end of the first quarter of the eighteenth century, practically all the Indian claims to the territory of the colony had been extinguished by purchase or treaty, some of them several times over.³

For more than twenty-five years, the colonists of Connecticut held their lands merely by *de facto* possession and native purchase.⁴ In 1662, however, through the efforts of John Winthrop, the younger, a royal charter was obtained, confirming to the colonists not only the land which they occupied, but also annexing the formerly independent jurisdiction of New Haven. The charter granted the land to be held as "of the manor of East Greenwich" in free and common socage on the condition of the payment of one-fifth the gold and silver found in the colony.⁵

Prior to the formation of the Fundamental Orders, in 1639, the inhabitants of the three river towns appear to have acted upon their own initiative in making purchases of land from the natives. Neither the Massachusetts Commission nor the Court which displaced it seems to have controlled the granting of land. After 1639, however, all unoccupied land became public domain, and by the Fundamental Orders the right to dispose of such land was given to the General Court.⁶

The parcelling out of the land of the colony was accomplished in two ways, first, by grants to individuals, and second, by

¹ MS. Rec. Towns and Lands, iv, 66, 68.

² After repeatedly forbidding unauthorized transfers of land from the natives, the General Court in 1706 ordered that if any person who had made such an illegal purchase should present an account of it to the Court no advantage would be taken of it. The following year this act was repealed. Col. Rec., v, 4, 30.

³ Cothren, Hist. of Ancient Woodbury, p. 21.

⁴ I pass by the somewhat mythical claim based upon the Warwick patent. For a discussion of this patent see Johnston, Connecticut, pp. 88 *et seq.*; Peters, Hist. of Conn., pp. 25 *et seq.*; Hoadley, Warwick Patent, Acom Club Publications, No. 7.

⁵ Poore's Charters and Constitutions, i, 252 *et seq.*; Cheyney, "The Manor of East Greenwich," *Am. Hist. Rev.* Oct., 1905.

⁶ Col. Rec., i, 25.

grants to groups of individuals. The individual grants, which were very common during the first fifty years of the colony's history, were in the nature of pensions, salaries, gratuities, or for the encouragement of some commercial enterprise.¹ These grants were often made by the General Court in the most indefinite way, allowing the grantee to choose the land wherever he pleased, so long as it did not prejudice any former grant.² As we approach the end of the seventeenth century, individual grants of land by the General Court become less common, but do not entirely cease.³

By far the most important manner of dividing the colony lands was by means of grants to groups of individuals with the object of forming new plantations. These grants were usually made in answer to petitions from actual or prospective settlers of a new plantation.⁴ If the petition was approved by the Court, a committee was generally appointed to view the proposed plantation, to see if the location was suitable, to consider the number of inhabitants it would accommodate and to lay out the town plot and home lots.⁵ The General Court might, and often did, direct more fully the formation of a new town. It was common for the Court to restrict the time in which the settlers should occupy and improve their grants.⁶ The manner in which the land should be divided among the settlers was at times specified by the General Court. Thus it was ordered that each proprietor should have "equal and even shares" of the lands in Ridgefield.⁷ In granting the plantation at Litchfield, the Court ordered that the township should be divided into sixty "rights," three of which were to be reserved for pious purposes.⁸ In settling the town of Waterbury, the committee

¹ *Ibid.* i, 276, 323; ii, 200, 214; iii, 233.

² Thus we find 150 acres to be taken up "where it doe not damnify the Indians nor ye plantation," and again "where he can find it in Connecticut limits." Col. Rec., i, 340, 372.

³ For grants subsequent to 1700 see MS. Rec. Towns and Lands, iii.

⁴ Occasionally the General Court took direct action in settling a township without a petition. Col. Rec., v, 180; vi, 63.

⁵ Col. Rec., ii, 210; v, 55, 160.

⁶ *Ibid.* ii, 128.

⁷ *Ibid.* v, 121.

⁸ *Ibid.* vi, 127.

of the General Court controlled the plantation for five years.¹ Add to the above activities of the Court the appointment of surveyors to fix the bounds of town grants, the settlement of disputes between towns as to their respective boundaries, and the occasional minute direction in special cases, and we have a substantially complete view of the land system, so far as the colony was concerned. In short, the land system of Connecticut was similar in all respects to that of the other corporate colonies of New England.² In these colonies there appeared no systematic attempt to obtain a revenue from the public domain. Land was granted freely to the settlers, and seldom leased or sold by the colony. Quit rents and alienation fines formed no part of the revenue of the corporate colonies. It is true that during the eighteenth century public land was not granted with such a free hand in Connecticut as had formerly been the case. It became common, in fact even the rule, for the colony to require some compensation for land grants,³ but there is no evidence that the colony aimed to obtain a permanent revenue by leasing the public lands, nor do any officials distinctly charged with the administration of the public domain appear.

We come now to consider the manner in which the land granted to groups of individuals was distributed; how individual ownership displaced joint ownership. It is in this connection that the real importance of the land system appears. It is to be expected that the different localities in working out an agrarian policy would vary in some essential points and in many details. Such being the case, it is difficult to make a general statement as to the land policy which would apply equally to all the towns. There was, however, enough similarity of treatment to justify us in speaking of a land system. Furthermore, there was sufficient difference between the territorial policies of the towns formed during the seventeenth century and of those

¹ Anderson, *Hist. of Waterbury*, i, 150.

² Osgood, *American Colonies*, i, 425 *et seq.*

³ The most noteworthy of the sales of public lands was that of the seven townships sold at public auction in 1737. Col. Rec., viii, 134, 170. See also Col. Rec., vi, 194; MS. Rec. Towns and Lands, ii, 273.

formed during the eighteenth century to warrant us in treating them separately.

It has been noted that the settlement of a town was usually occasioned by a petition from prospective or actual settlers. These settlers formed a reasonably definite group, and we are met at the outset with the question: Were these petitioners granted the land as proprietors in fee simple, or were they acting merely as trustees for the town in its corporate capacity? During the first fifty years of the colony's history, the question did not appear to be of much importance. In most of the towns the grantees included all, or nearly all, the freemen of the town, and under these circumstances a town meeting would be at the same time a meeting of the proprietors. As a result it became customary in most of the towns during the seventeenth century to make allotments of land and provide for the regulation of the undivided land in the town meeting.¹ The attitude of the General Court, moreover, seemed to confirm the view that the towns should have the power to regulate their common lands. In 1639, in defining the power of towns, the General Court stated that the "Towns of Hartford, Windsor and Wethersfield, or any other Towns within this jurisdiction, shall each of them have power to dispose of their own lands undisposed of."² Again, in 1643, the General Court ordered that as the condition of the plantations required that much of the land should be improved in common, each town should, before the next meeting of the Court, choose seven "able and discreet men to take the common lands belonging to each of the several townnes, respectively, into their serious and sadde consideration."³

As we approach the end of the seventeenth century, however,

¹ *Hartford Town Votes*, pp. 39, 42, 46 *et passim*; *Adams-Stiles, Hist. of Wethersfield*, I, 95; *Andrews, Three River Towns*, *Johns Hopkins University Studies*, vii; *Allen, Hist. of Enfield*, *passim*; *Steiner, Hist. of Guilford*, 174; *Colchester, Town Rec.*, *passim*; *Caulkins, Hist. of Norwich*, p. 95; *Cothren, Hist. of Ancient Woodbury*, p. 145.

² *Col. Rec.*, I, 36.

³ *Col. Rec.*, I, 101. It is possible that this referred merely to the sequestered town commons, but it does not appear from the records that such was the meaning of the provision.

the distinction between the original settlers and their descendants, and those who came in after the settlement of the towns, becomes more marked. Land had increased in value with the increase in population. The number of inhabitants who were not descendants of original settlers was constantly augmented. As a result we find developing in most of the towns three distinct classes of inhabitants: first, the original settlers or "proprietors," their heirs, assigns and successors; second, admitted inhabitants of the town, who were not proprietors; third, transients, who were neither proprietors nor admitted inhabitants.¹ The first two classes formed the active part of the population of the town. The proprietors were, relatively, a fixed group, while the admitted inhabitants were constantly increasing. In the natural course of events, the latter would soon come to hold the balance of power in the town meeting, and as the administration of the land had become a function of the town meeting, they would control the distribution of the undivided land.

The proprietors, in order not to lose control of the land, set up the claim that the grant of the township by the General Court was made to the original settlers, their heirs, assigns and successors in fee simple, and not to the town in its corporate capacity; and that the proprietors should have the exclusive right to grant the undivided land in the town. In some of the towns where the proprietors were still in the majority, no effective opposition was made to their claims,² but in towns where the non-commoners equalled or outnumbered the proprietors, the pretensions of the latter were not quietly acquiesced in. In Simsbury, as early as 1672, a controversy arose as to whether the "outlands" belonged to the original proprietors, or to the inhabitants of the town generally. At a town meeting held in April, 1672, it was voted to divide a portion of these lands

¹ Dr. Stiles in his recent thorough study of Wethersfield makes a four-fold division: (1) proprietors, (2) freemen of the commonwealth, (3) admitted inhabitants of the town not freemen of the commonwealth, (4) householders. This classification does not include the transient resident, who, though he received scant courtesy from the town, was still a portion of the population. Adams-Stiles, Hist. of Wethersfield, I, 41.

² In Windsor undivided land was granted exclusively by the proprietors. Andrews, Three River Towns.

among the inhabitants of the town; similar divisions were also voted in 1680 and 1688, against all of which the proprietors protested ineffectually. The question again arose in 1719, when a committee appointed for the purpose reported, and the town voted, that

the right of disposal of common or undivided land, is and shall be in all such and them only who can derive their right so to do, either from an act of the General Assembly, and their heirs and assigns, or those who have been admitted inhabitants, and their heirs and assigns, or shall hereafter be admitted inhabitants with that power and right expressly inserted in the town's vote of admission.¹

To this action of the town the proprietors took exception. The town, however, continued to grant the undivided land until the action of the General Court sustained the contention of the proprietors, after which the remaining common lands were managed and conveyed exclusively by the proprietors. Similar controversies occurred in New London, Canterbury, Ashford and other towns.²

It was in connection with the struggle in New London, that the question was brought before the General Court in 1719 for final settlement by petitions from both the town and the proprietors.³ The attitude of the General Court had been at first, as we have seen, that the towns were empowered to regulate and dispose of the common lands. The first indication of a change of view on the part of the Court was in 1685, when patents were first issued to the various towns.⁴ In these patents it was stated that the land in the towns was granted "to the said proprietors inhabitants, their heirs and assigns."⁵ In confirm-

¹ Phelps, Hist. of Simsbury, p. 80.

² Caulkins, Hist. of New London, p. 263; Larned, Hist. of Windham Co., i, 156; *ibid.* i, 214 *et seq.*

³ MS. Rec. Towns and Lands, iii, 174-184. Gov. Saltonstall strongly supported the proprietors of whom he was one. See his protest against the action of the town in dividing the common lands. MS. Rec. Towns and Lands, iii, 239.

⁴ Probably the reason for the issuance of the patents was to guarantee the titles to land that had been granted, before the colony's charter was vacated by *five warrants* proceedings which were then pending.

⁵ Col. Rec., iii, 177.

ing the patents of several towns in 1703, the following even stronger expression was used:

all and every the several above mentioned lands with all rights and immunities contained in the above mentioned patent, shall be and remain a full and clear estate of inheritance in fee simple to the several proprietors of the respective towns.¹

The next expression of the General Court upon this important question, was in answer to the New London petitions. When the petition of the town was first presented long debates ensued, the Upper House favoring the proprietors and the Lower House favoring the town.² The Court finally ordered that, it "being a matter of so great weight and general concern as to effect the generality of the towns," consideration of the question should be postponed until the next session of the Court.³ At the following session it was resolved that the patent to the town did

confirm the lands in said township to each and every proprietor in such towns, and to such as have any distinct propriety there though not living in such towns . . . also all lands not divided or disposed to hold as tenants in common; all of which undivided lands were confirmed to them, the said proprietors, their heirs and assigns, so that no person by becoming an inhabitant afterwards could have any right to dispose of any land in said town by voting in a town meeting.⁴

But the General Court ordered that all titles to land which had been previously obtained by town votes were to be valid.

The proprietors having carried their point, in many of the towns they took steps to organize themselves in a more permanent manner. Proprietors' meetings were held distinct from the town meetings, and the regulation and disposal of the undivided land was thenceforth controlled exclusively by the proprietors. The corporate character of the proprietors was recognized by the General Court in a number of acts. The

¹ Col. Rec., iv, 443.

² MS. Rec. Towns and Lands, iii, 174 *et seq.*

³ Col. Rec. vi, 131.

⁴ *Ibid.* vi, 189.

proprietors were required to hold a meeting upon the application of at least five of their number; they were empowered to levy taxes upon themselves, and to choose a clerk duly sworn to record their proceedings.¹ At a proprietors' meeting a moderator and clerk, and usually a treasurer, were chosen. Much of the business of the proprietors was transacted by means of committees. Thus committees were appointed to provide for the division of the common lands, to look after the common fence, to search out and prosecute trespassers, to survey grants and lay out highways, *etc.*² Attorneys were also appointed by the proprietors to prosecute and defend all actions brought in the name of the proprietors.

While the proprietors in any given town were, in theory, the heirs, assigns and successors of the original settlers, and hence tended to become a close corporation, in many of the older towns the theory did not agree with the facts. Through lack of records in some towns it was impossible to discover who were the original settlers, and in such cases the taxable inhabitants at a given time were reckoned as proprietors.³ Furthermore, the proprietors not infrequently added to their numbers. Thus in 1713, the proprietors of Colchester voted to add some twenty-four persons to the list of proprietors.⁴ In Waterbury we find a distinction made between the original proprietors called "Grand Proprietors" and those later admitted called "Bachelor Proprietors." The latter shared in the division of common lands, but had no voice in granting land.⁵

We have thus far examined the administration of the land system, as it developed in the towns of the seventeenth century. The attempt has been made to show that, while at first the

¹ Col. Rec., vi, 25, 379, 424.

² See Proprietors Rec. of New Hartford, Norfolk, Canaan, Guilford and other towns.

³ In Guilford the body of the proprietors was fixed by town vote in 1697, and included all those that were settled planters in 1686. Steiner, Hist. of Guilford, p. 174. In New London such persons as were land holders in 1703 when the town patent was granted were considered proprietors. Caulkins, Hist. of New London, p. 263.

⁴ Colchester, Prop. Rec., April 28, 1713.

⁵ Anderson, Hist. of Waterbury, i, 280; Bronson, Hist. of Waterbury, p. 116.

towns in their corporate capacity regulated the territorial policy, by the end of the century the proprietary system had become general. In many of the older towns, however, the greater part of the common land had been distributed before the proprietors obtained exclusive control, and hence their activity was considerably restricted. It is when we reach the towns formed during the eighteenth century that we find the system of proprietary holdings most fully developed. We come now to consider these towns.

The territory from which the greater number of the towns of the eighteenth century were formed was the so-called "Western Lands," covering approximately the present county of Litchfield. All of this vast territory, comprising over 300,000 acres, had been granted by the General Court to the towns of Hartford and Windsor, in 1675.¹ This grant was made in anticipation of the loss of the charter, and in order to prevent the lands from falling into the hands of Andros. Not much attention was paid to the territory until after the opening of the eighteenth century. The land was rugged, and other more desirable territory was available for settlement.

The first attempt made by the Hartford and Windsor patentees to improve their grant was in the settlement of the town of Litchfield in 1719. The General Court, while granting the privilege of settling this town, practically rescinded, at the same time, the former extensive grant to the two towns.² The inhabitants of Hartford and Windsor resisted³ this act of the General Court, and the title to the lands was in dispute until 1726, when a compromise was reached by dividing the territory between the two towns and the colony.⁴ The territory reserved to the colony embraced the present towns of Canaan, Norfolk, Goshen (including Warren) and about two-thirds of Kent, while Hartford and Windsor received the present towns of Colebrook, Hartland, Winchester, Barkhamsted, Torrington, New Hartford

¹ Col. Rec., iii, 225.

² *Bid.* vi, 127.

³ Trumbull gives an account of a riot at Hartford caused by the dispute over the title to this territory. This story, however, has been discredited. Trumbull, ii, 96; Boyd, *Annals of Winchester*, p. 11.

⁴ *Bid.* vii, 44, 337.

and Harwinton. These towns may be taken as typical of nearly all the towns formed during the eighteenth century, and an examination of the system of land administration in these towns will suffice as showing the chief characteristics of all towns formed during this period.

In 1732 the towns of Hartford and Windsor made a division of their portion of the Western Lands, by which the townships of Hartland, Winchester and New Hartford, and the eastern half of Harwinton went to Hartford, and the townships of Colebrook, Barkhamsted, Torrington and the western half of Harwinton fell to Windsor. In the same year the General Court authorized the inhabitants of Windsor, and the following year the inhabitants of Hartford, to meet and make partition of their land to individual proprietors.¹ The taxable inhabitants of the two towns were then divided into seven "companies," each owning a township. The share of any individual in a company depended upon the amount of his ratable estate in Hartford or Windsor.

The manner in which the part of Western Lands reserved to the colony was disposed of, and proprietorships created, is of interest, as characteristic of the way in which practically all the remaining public domain was parceled out. In 1737 the General Court ordered that the five townships on the east of the Housatonic River, and the two on the west,² should be sold at public auction in certain specified towns of the colony.³ Six of the seven townships were divided into fifty-three "rights" or shares.⁴ Three of the rights in each township were reserved, one for the use of the ministry, one as a gratuity to the first minister, and one for the support of the town school. The remaining fifty rights were sold to the highest bidders. The

¹ Col. Rec., vii, 387, 445.

² The five townships on the east side of the river were Norfolk, Canaan, Goshen, Cornwall and Kent; the two on the west, Sharon and Salisbury.

³ Norfolk at Hartford, Goshen at New Haven, Canaan at New London, Cornwall at Fairfield, Kent at Windham, Salisbury at Hartford, Sharon at New Haven. All the townships seem to have found purchasers except Norfolk, which was not finally sold until nearly twenty years later. Col. Rec., viii, 135; 1, 320.

⁴ Salisbury was divided into twenty-five rights.

Court, however, fixed certain minimum prices for each right, ranging from 30 to 60 pounds. Certain restrictions were placed upon prospective purchasers. They were required to be inhabitants of the colony, to settle themselves or their agent and live three years in the town in which they purchased land, to build a house of certain specified dimensions, and clear and fence at least six acres of land.¹ The method thus employed of distributing the public land might be termed the "eighteenth century plan," and from it developed certain characteristics which were markedly different from those of the land system in the older towns.

Perhaps the most striking distinction in this respect between the older and later towns, was the appearance in the latter of absentee proprietors, and the land speculation incident to such proprietorship. In the older towns the proprietors were, to a large extent, actual settlers, and their land holdings were confined largely to the town in which they lived. In the towns formed during the eighteenth century, however, the proprietors bought land in a township having no intention of settling there. The land was purchased merely upon speculation, and it was common to find a large part of the land in a township change hands before any settlement had been made.² Proprietors' meetings were held where a majority of the proprietors lived,³ and this was often not in the town of which they were proprie-

¹ Col. Rec., viii, 134 *et seq.*

² Not one of the 106 original proprietors of Winchester ever dwelt in the town, and only one son of a proprietor ever had a permanent residence there. Boyd, *Annals of Winchester*, p. 31. Of the twelve proprietors of Union only one was an actual settler. Lawson, *Hist. of Union*, p. 39. Of the 41 original proprietors of Sharon about one-half became residents. Sedgwick, *Hist. of Sharon*, p. 24. In 1761 the proprietors certified that of the 25,000 acres of land in Cornwall from eleven to twelve thousand acres were owned by non-residents. MS. Rec. Towns and Lands, viii, 278. See also Orcutt, *Hist. of New Milford*, 70; Atwater, *Hist. of Kent*, p. 17; MS. Proprietors Rec. of New Hartford, pp. 11 *et seq.*

³ The meetings of the proprietors of New Hartford were held at Hartford from 1732 to 1738. The first meetings of the Goshen proprietors were held at Litchfield, of the Cornwall proprietors at Hartford, of Norfolk proprietors at Simsbury, of the Canaan proprietors at Wethersfield, and of the Kent proprietors at Windham. MS. Prop. Rec. of New Hartford, Norfolk and Canaan. Hibbard, *Hist. of Goshen*, p. 30; Gold, *Hist. of Cornwall*, p. 20; Atwater, *Hist. of Kent*, p. 22.

tors. An outcome of the tendency to land speculation was the delay which resulted in the settlement of some of the towns. Land being held largely for a speculative increase in value and not for actual settlement, long periods of time elapsed between the sale of a township and its actual settlement.¹

The distinction between the proprietors' meetings and the town meetings, and between their spheres of activity, was much more clearly marked in the towns of the eighteenth century, than was the case in the older towns. Seldom or never do we find the town meetings in the later towns interfering in the regulation or distribution of the common land. The exclusive right of the proprietors to deal with these questions was generally conceded from the outset. Disputes between the towns and the proprietors did arise, but these were usually concerning the right of the town to tax the proprietary lands.²

The proprietors as a body, in the later as in the older towns, continued their activity as long as there remained common or undivided land. At first their meetings were frequent, but as the successive divisions of common land constantly diminished their holdings in severalty, their activity decreased and meetings were held less and less frequently.³

Thus far in the treatment of the land system, emphasis has been laid merely upon the question of administration. The attempt has been made to show that the activity of the colonial authorities in administering the land system was little more than supervisory, while the real direction and administration of the land was left to the localities; and, furthermore, that in the

¹ Winchester, one of Hartford's towns in the Western Lands, was not settled or divided until twenty-nine years after the division of the Western Lands. Boyd, *Annals of Winchester*, 31. It was nine years after the sale of Union before any attempt was made to divide the land among the proprietors. Lawson, *Hist. of Union*, 38.

² MS. Rec. Towns and Lands, iii, 136, 195; MS. Prop. Rec. of New Hartford, August 6, 1744; Lawson, *Hist. of Union*, p. 50.

³ Meetings of the proprietors of Norfolk were held regularly twice, or oftener, a year until 1768, then no meeting is recorded until 1804, and then at intervals of ten years or more until 1856. Meetings of the Canaan proprietors were held at intervals of two or three months until 1765, then irregularly until 1804. MS. Prop. Rec. of Norfolk and Canaan. See also Caulkins, *Hist. of New London*, p. 263; Allen, *Hist. of Enfield*, i, 92; Steiner, *Hist. of Guilford*, p. 175.

towns the system of proprietary administration had displaced the town administration of land by the end of the seventeenth century. The system of proprietary control which became general during the eighteenth century was in all essential points analogous to the administration of the land system in the proprietary provinces.¹ The proprietors in the Connecticut towns were a reproduction on a smaller scale of the proprietors of Maryland and Pennsylvania. While the elaborate administrative machinery of the latter did not appear in any of the Connecticut towns, still the aims of the proprietors in each case were identical, namely, to obtain a revenue from their lands.

We come now to consider the manner in which the land of a township was distributed among the individual proprietors. Here again a distinction will be made between the earlier and later towns.

The character of the land in any township varied according to its location and topography. In most of the older towns which were situated on or near rivers or streams, the land might be classified roughly under the following heads: (1) Meadow or marshy land; (2) cleared upland; (3) uncleared or wooded land. Upon the cleared upland was usually located the town plot, home lots and planting grounds. The meadow furnished hay and pasturage, while in the wooded land were pastured the swine, sheep and young cattle.²

The first step in the settlement of a town was the laying out of the town plot and the assignment of home lots. This, as we have seen, was often done by a committee of the General Court.³ The home lots varied greatly in size in the different towns, and often within the same town. In Guilford they ranged from 1 to 10 acres; in Wallingford and Enfield they were uniformly 10 or 12 acres; in Litchfield 15 acres, while in Woodbury the inhabitants were divided into six "ranks," the home lots of the different ranks being 25, 20, 18, 16, 12 and 10 acres.⁴ Generally

¹ Osgood, *American Colonies*, ii, 16 *et seq.*

² *Ibid.* i, 437.

³ Col. Rec., ii, 210; v, 55, 160.

⁴ Steiner, *Hist. of Guilford*, p. 49; Davis, *Hist. of Wallingford*, p. 81; Woodruff, *Hist. of Litchfield*, p. 18; Allen, *Hist. of Enfield*, i, *passim*; Cothren, *Hist. of Ancient Woodbury*, p. 39.

the location of a person's home lot was determined by chance, but not infrequently the minister or other prominent settler would be allowed first choice.¹ After the home lots had been granted, the upland and meadow was subject to grant. Here again the division was usually made by lot. The circumstances which determined the size of a person's home lot, as well as his share of meadow and upland, varied in different towns. Occasionally, though not often, a rigid equality was observed in the assignment of home lots and other land.² Generally, in the earlier divisions, an attempt was made to proportion a person's share to his investment, or his activity in forming the plantation, or his ability to advance the interests of the community. As time passed, the amount of a person's taxable estate became the common index for determining his share in the undivided lands.³ In Wallingford the whole population was divided into three "ranks." The persons in the first "rank" paid double the amount of taxes of those in the lowest "rank," and one-third more than those of the middle "rank." Land was then divided among the ranks in the proportion of 4, 6, and 8.⁴ In Guilford, in the fourth division of land, the rule was that there should be given one acre of land for every pound in the list, 18 acres for each male child, and 10 acres for each woman or female child.⁵

There appeared in some of the towns a desire to prevent too large an accumulation of lands in the hands of a few persons. In the "Articles of Association and Agreement," entered into by the planters of Waterbury, it was provided that no person should subscribe to more than 100 pounds' allotment.⁶ In Guilford it was provided that no one should put in his estate above 500 pounds to "require accommodation in any division of lands."⁷

Seldom, or never, was all the undivided land of a town

¹ Caulkins, Hist. of New London, p. 59.

² Col. Rec., v, 55, 121; Andrews, Three River Towns, Johns Hopkins University Studies, vii.

³ Norwalk Town Records, December 12, 1687; Andrews, Three River Towns, Johns Hopkins University Studies, vii; Larned, Hist. of Windham Co., i, 37.

⁴ Davis, Hist. of Wallingford, p. 81.

⁵ Steiner, Hist. of Guilford, p. 173.

⁶ Bronson, Hist. of Waterbury, p. 8.

⁷ Steiner, Hist. of Guilford, p. 49.

granted in one division; successive divisions were made as occasion demanded. As a result it was common to find a person's estate distributed about the town in a number of small tracts.¹

Besides the regular division of land in which all, or a majority, of the inhabitants shared, a large number of individual grants appear in the records of the different towns. These grants were made sometimes to accommodate new settlers, at others to equalize a person's share in a regular division because of deficiency in the quality of the land, and again to poor settlers who did not share in the general distribution.²

A result of the manner of dividing land which has just been described was that a considerable portion of the land would remain for a greater or less period of time undivided. The fencing and regulation of this common land was an important function of the town or proprietors' meetings. Furthermore, it was customary, when a given portion of common land had been divided among the proprietors, to allow the land to remain in one common field. Each owner improved his own part of the common field in his own way, and after the crops had been removed, it was the custom to depasture the field, allowing each owner to turn in a number of cattle proportioned to his acreage of land in the field.³ Of the common fence each proprietor was required to build and keep in repair an amount proportioned to the amount of his holding in the field. The fences were viewed at regular intervals by fence viewers, and fines were imposed on those proprietors who failed to keep their portion in repair.⁴ Besides the proprietary fields which lay in common, there were the town "commons." The latter were certain

¹ One Isaac Gleason possessed some twelve separate portions of land in different parts of the township of Enfield. Allen, *Hist. of Enfield*, i, 137 *et seq.*; Compare Osgood, *American Colonies*, i, 449.

² *Hartford Town Votes*, pp. 197, 212, 238; *Derby Rec.*, pp. 28, 29, 78 *et seq.*; Allen, *Hist. of Enfield*, i, 283.

³ Adams-Stiles, *Hist. of Wethersfield*, i, 113; Eggleston, *Land System of the New England Colonies*, Johns Hopkins University Studies, iv, 594.

⁴ Steiner, *Hist. of Guilford*, p. 246. See a good description of common fields and fences in Bronson, *Hist. of Waterbury*, pp. 47 *et seq.*

amounts of land sequestered by vote of the town or proprietors for the use of the town generally. These commons furnished pasture, firewood, timber, stone, *etc.*, to the inhabitants of the town without any reference to their proprietary ownership. These commons were maintained in some towns for many years, but finally were divided as the other proprietary lands.¹ The maintenance of common herds and herdsmen was a characteristic accompaniment of the system of common fields. The cattle and sheep of a town were placed in one or more herds under the charge of regularly chosen town herdsmen and shepherds.²

An interesting feature of the land system of the older towns was the restrictions which were placed upon the right of an individual to alienate his land. As the entire right of commoners both in the divided and undivided lands might be sold or transferred, it was deemed necessary in order to prevent undesirable persons from becoming land holders and possible inhabitants of the town, to restrict the right of a person to dispose of his land at will. In 1659 the General Court provided that no person should sell his land until he had first offered it to the town in which the land lay and the town had refused to purchase it.³ To this general enactment the towns added other restrictions. From the first, Hartford had required the consent of the town to the sale of lands.⁴ In Enfield a person was required to oc-

¹ Adams-Stiles, Hist. of Wethersfield, i, 113 *et seq.*; Bronson, Hist. of Waterbury, pp. 79 *et seq.* An interesting controversy occurred over the division of the town commons in Hartford in 1754. The descendants and successors of the "Ancient Proprietors" claimed the right to divide the commons among themselves, and proceeded to lay out a division. The "Inhabitants Proprietors," or tax-paying inhabitants, disputed this division and proceeded to lay out the commons to the taxable inhabitants. This soon produced a number of suits in the courts to determine the title. After various decisions, generally in favor of the Ancient Proprietors, a compromise was reached by which the town purchased the rights of the Ancient Proprietors. The land was then distributed, probably, among the taxable inhabitants. MS. Documents in the library of the Conn. Hist. Soc.

² In New London the cattle were placed in two herds each with a keeper. Canlins, Hist. of New London, p. 82. See also Allen, Hist. of Enfield, i, 328; Steiner, Hist. of Guilford, p. 240.

³ Col. Rec., i, 351.

⁴ Hartford, Town Votes, February 21, 1636.

cupy his grant of land seven years, and also obtain the consent of the town before he could sell it.¹

During the eighteenth century when it became usual for the General Court to sell townships instead of freely granting them, a different system of division prevailed. These townships, as we have seen, were usually divided into a certain number of "rights," each right entitling the purchaser to an equal share in the land of the township. Thus the basis for the division of land was exclusively investment, not ability or taxable estate, as had been common in the older towns. Naturally this resulted in much greater uniformity in the size of home lots and other holdings. The successive divisions of land followed each other with greater rapidity in the later than in the older towns.² The frequent transfer of land holdings was a feature of the land system in the towns of the eighteenth century. Often, an entirely new set of proprietors would participate in the third and later divisions of common lands. Common fields, fences, and herds were much less a feature of the town economy of the later than of the earlier towns. This was due in part to the fact that the colonists had emerged from the primitive conditions of land cultivation, but more largely to the fact that in many of the later towns the proprietors, being non-residents or speculators, did not improve their holdings.

¹ Allen, *Hist. of Enfield*, i, 62. See similar provisions. Caulkins, *Hist. of Norwich*, p. 102; Davis, *Hist. of Wallingford*, p. 80; Cothren, *Hist. of Ancient Woodbury*, p. 40.

² There were twelve divisions in Canaan, eight of them in the first seven years after the settlement of the town. In Norfolk there were eight divisions, in New Hartford five, in Kent ten and New Milford fourteen, most of them at short intervals. MS. Prop. Rec. of Canaan, Norfolk and New Hartford; Atwater, *Hist. of Kent*, p. 17; Orcutt, *Hist. of New Milford*, p. 13.

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MUNICIPAL HOME RULE¹

A NY discussion of the subject of municipal home rule naturally divides itself into three somewhat distinct parts.

In the first place, we must determine what we mean by the word municipal; *i. e.*, we must ascertain what functions discharged within a city have a distinctly local and municipal interest. In the second place, we must endeavor to determine what we mean by the term home rule. And finally, assuming that the establishment of home rule is advantageous, we must find out in what way we can secure the desired end.

First, then, what are the functions which are of distinctly local and municipal interest? We may by no means assume that all of the governmental functions which are discharged within the limits of a municipality are of exclusively local concern. Thus, there is in every municipality a post-office. Such a post-office, however, forms a portion of a greater system which extends throughout the entire country, and the functions which are discharged within such a post-office are merely a part of the work done by an administrative organization whose activity outruns the limits of any particular section. Thus, again, in many cities we find a custom house at which vessels and goods coming from foreign countries are entered and the duties by law imposed on such imported goods are paid. Like the post-office, however, the custom house forms a part of an administrative organization which extends over all the territory of the United States. It is unnecessary to attempt an enumeration of all the functions of government, discharged within a given municipality, which are of this character. The illustrations given suffice to show that there is a class of functions discharged in every city which are of general interest, and in the discharge of which, under modern conditions, the city authorities as such have little if anything to do.

¹ Address delivered before the Civic Conference at Portland, Oregon, August 18, 1905.

At the same time it is well to remember that many of the functions which are now regarded as distinctly belonging in the sphere of general government were at one time discharged by the cities and, in the conditions of the time, were regarded as of peculiar, if not exclusive, interest to the city which attended to them. Thus, for example, during the fourteenth and fifteenth centuries European cities very commonly maintained military forces which had no connection with the forces of the several countries in which the cities were geographically located. Further, it was necessary for the city to pursue such a policy if it paid proper attention to the interests of its own inhabitants, because the very existence of the city and the commercial and industrial welfare of its people, for the maintenance of which the city government had been established, were almost entirely dependent upon its power to resist the attacks of its enemies. Thus, again, the collection of the customs, which at the present time is under the control of our central government, was in certain of the North American colonies numbered among the duties of the town officers.

There is another class of functions discharged within the limits of the city, in regard to which the city authorities are called upon to act but which, nevertheless, are not purely municipal. These functions are discharged by the city authorities rather as agents of the general government of the state than as representatives of purely local interests. Thus, for example, it is very commonly the case that officers, elected directly or indirectly by the people of the city, discharge functions connected with the administration of justice. The determinations which these officers make in the decision of cases brought before them are, however, in many cases, appealable to higher judicial bodies which are regarded as representing the state as a whole rather than the city. In other words, municipal judicial authorities form a part of the general judicial system of the state.

Here, as in the case of those functions which have been referred to as of distinctly state interest, the cities in former times occupied a much more independent position than they do at present. In earlier days there was practically no general state judicial system, just as there was no general state law; or if

there was a general judicial system or a general state law, the cities were excluded from that system and from the operation of that law; and the judicial authorities which a city established and maintained acted independently of state control, elaborating a law which was binding upon its citizens alone, and which was the only law binding upon them as to transactions which took place within the city.

As a result of the struggle between the cities and the states within which they were situated, which was particularly characteristic of the seventeenth and eighteenth centuries of European history, the cities were reduced to a position of complete subordination to the governments of the states within which they were situated. One of the causes which produced this result is of course to be found in the consolidation and extension of the royal power. Another cause, however, is to be found in the fact that economic conditions were everywhere so changed, during the centuries immediately preceding the nineteenth, that there was no particular advantage to be derived by the city from the maintenance of the exclusive position which it had attained prior to that time. Thus, for example, one of the reasons for the development of the legal exclusiveness to which allusion has been made, is to be found in the fact that the existence of commercial and industrial life, which was characteristic of all cities then as it is now, made necessary the development of a law which was quite different from the law developed in the open country, where economic conditions were mainly of an agricultural character. As a result of the increased importance of industrial and commercial life, the law developed in cities became in many instances the common law of the state in which the city was situated. The judicial procedure which was adopted in the cities replaced the procedure by means of oaths and ordeals which had been developed for the settlement of controversies in the open country and which was perpetuated in the feudal courts; and the law merchant became a part of the general law. When this development was completed the cities were no longer obliged to insist upon the continued and permanent exclusion of the city territory from the operation of the general law.

The result, then, of the historical development of Europe, particularly in the seventeenth and eighteenth centuries, was to take from the cities the right to discharge the functions of government whose discharge had seemed to them in the past to be of the greatest importance; and all the power that the cities retained, after the centralization of authority in the state government, was the right, with the consent of the state government, to act as its agents in the exercise of powers which the state might, with due regard to the maintenance of its own integrity, delegate to city authorities.

At the present time, however, there are other functions discharged within the limits of a city which have little if any interest for the state as a whole. Thus, intra-urban transportation is a business whose influence is felt only within the limits of the city. Thus, again, the drainage of a city may be so attended to as to affect in hardly a perceptible degree those portions of the state lying outside of the city limits. Thus, again, the proper housing of the city people, which in congested centers of population often demands attention, is a matter which has little if any interest for the people of the state not resident in the city. During the course of the nineteenth century these and kindred matters became of increasing importance because of the great increase in urban populations and because of the origination and development of scientific methods of treating them.

While it would not be absolutely correct to say that prior to the opening of the nineteenth century these matters had received no attention at all, we should certainly be within the bounds of truth were we to say that such treatment as they did receive was absolutely inadequate and was accompanied by few if any beneficial results. It is really because of the increased importance of these subjects, due to the causes which have been mentioned, that a municipal problem has again arisen. The municipal problem prior to the opening of the nineteenth century had been practically settled in favor of the state. After a long period of struggle, it had been decided almost everywhere throughout the western European world that it was inexpedient that there should be anything like municipal home rule. Practically all the functions which cities had claimed

the right to discharge had been assumed by the state, or, if still discharged by the cities, were discharged by them as the agents of the state government and subject to state control. But with the development both in number and importance of these functions of government which have been spoken of as distinctly municipal, a new municipal problem has arisen. The question now is: Shall these new functions of government, which are mainly if not exclusively of local interest, be attended to by the municipal authorities, or shall they be attended to by the authorities of the state government, according to the same rules and under the same conditions as those functions which, though formerly municipal, are now regarded as of state concern?

The differentiation of governmental functions which I have attempted to make appears to be necessary if we are to obtain a clear idea as to the proper content of municipal home rule. For if we regard municipal home rule as applicable to all functions of government discharged within the city limits, we are acting without discrimination. We are in reality attempting to turn back the hands of the clock of time and to apply principles to conditions to which they are not in any way applicable.

It may therefore be said that, conceding that municipal home rule is in any case desirable, it is not desirable that its principles should be applied rigidly to all functions of government discharged within the cities, but that, if we are to judge from the verdict of history, its principles are applicable only to those functions of government which, as a result of the development of the nineteenth century, are to be regarded as distinctly local and municipal in character.

We may go a step further. We may say that even as to certain of the functions of government, which at the present time may appear to be of exclusively local and municipal interest, the principles of home rule may cease to be applicable on account of a change in the social and economic conditions of the country. Thus, for example, during most of the nineteenth century the problem of municipal water supply was regarded as a problem whose solution affected only the city which was to be supplied with water. On account, however, of the great increase in the size and number of urban communities in some of the

states of this country, the problem of municipal water supply has ceased to be a problem whose solution affects merely the cities to be supplied with water, and has become a problem whose solution affects as well those portions of the state from which the water supply is to be derived. At the present time, in the eastern portion of the state of Massachusetts, the competition between the various urban communities for the sources of water supply has been so keen that the state has been obliged, in the interest not only of the urban communities concerned but also of the rural districts from which the water supply is to be taken, to step in and regulate this matter itself. This it has done through the formation of a metropolitan water commission, as it is called, whose members are appointed by the state and whose expenses are paid by the issue of state bonds. Similar conditions are appearing in connection with the proposed increase in the water supply of the city of New York.

On account of the fact that functions which appear now to be municipal may in the future become of interest to the state as a whole, it is absolutely necessary that the state, in whose limits the cities are to be found, shall reserve to itself the power of taking into its own administration, or subjecting to its control, any function of city government whose influence has, on account of the change in social conditions, come to transcend the limits of a particular city.

What functions discharged in any given city shall be regarded as municipal in character is a question whose answer is dependent upon the geographical and social conditions of such city and of the state in which it is situated. Thus, the sewerage problem of a city like New York, which is situated on tidal waters, may be a purely municipal problem, while the sewerage problem of a city like Chicago, which discharges its sewage into interstate waters, is a problem which transcends not only the limits of the city but those of the state in which the city is located. But, notwithstanding these considerations, there are unquestionably discharged in every city functions which are of concern to that city alone and to which the principles of municipal home rule may with propriety be applied.

What, now, do we mean by the term home rule? In a gen-

eral way it may be said that this term has had two meanings. One of these meanings has been characteristic of the institutions of England and the United States. The other has been characteristic of the institutions of continental Europe.

In accordance with Anglo-American ideas, local self-government, which of course is another term for home rule, has consisted in the privilege of given localities to choose the officers who were to discharge governmental functions within their limits. Local self-government, according to Anglo-American ideas, has not, or has only very recently, involved the additional power of determining the policy to be adopted by the specific localities affected. Local self-government of the Anglo-American type has been developed in connection with the extreme centralization in all matters of legislation which has been characteristic of English public law and still obtains in the countries whose public law is based on that of England. So far as the local bodies were concerned, the principle found its expression in the rule of law which requires a local authority to show some legislative authorization in order to justify the exercise of a power of government. The application of this rule has had for its result that the city in the United States has been unable to determine for itself the sphere of its activity even as to those matters which concerned it exclusively. Thus, under the Anglo-American system, the city has not been able to regulate its system of public lighting unless it has been authorized so to do by the legislature, and in many instances the legislature has not given it the necessary power even where the city has made application to the legislature for such power.

The enormous amount of special legislation, which the application of this principle necessarily entailed, brought with it a reaction. About the middle of the nineteenth century various attempts were made by the people of the states of the American union to limit the power of the state legislatures in passing special legislation applicable particularly to municipalities. Attempts were also made to withdraw completely from the legislative competence certain matters which were regarded at the time as of exclusively local concern. The success which attended this effort on the part of the people cannot here be stated

in detail. It is sufficient to say that the anticipations of those who believed that, through the constitutional limitations which were adopted, the powers of the legislatures would be diminished, were not realized. The courts, largely through the recognition of the device of classification, have, since the adoption of these constitutional provisions, permitted a great deal of legislation which was really special in character.

Later on the attempt was made, beginning particularly with the Missouri constitution of 1875, to grant to the people of specific cities, or of all the cities of a certain size within the state, the right to draw up their own charters of local government, which, after being adopted, should not be susceptible of amendment by the state legislature. This method of securing to the people of a locality the right, not merely to choose their own officers but to determine the policy to be pursued by the city, has been measurably successful. It has not had as wide-reaching effects as were expected, because the courts at once began to differentiate a field of municipal government, to which the principles of home rule should be applied, from a field of state government in which the legislature of the state should still be permitted wide freedom of action.

This method has been, however, the most successful American attempt to solve the problem of municipal home rule; but the result of this attempt has been merely to secure to the people of the cities the power to regulate, free from state interference, matters which may be classed under the general head of local improvements, and to fix in its details the municipal organization necessary to carry on in this field the undertakings which may be determined upon by the municipal authorities. Over all other portions of what we are accustomed to regard as municipal government, the legislative control, from whose exercise very many evil results have flowed, still remains nearly as complete as before the adoption of these constitutional provisions.

A different conception of local self-government has been developed in continental Europe. While the Anglo-American conception laid emphasis originally upon the power of the local areas to select the officers discharging governmental functions within their limits, the continental European conception laid

emphasis upon the power of some local legislative body, representative of the municipality over which it had jurisdiction, to determine the local policy which was to be adopted and to put it into local execution. The principle at the bottom of the continental European form of municipal home rule finds expression in the rule of law that the municipal corporation is not an authority of enumerated powers but rather one of general powers, and that, in order to show the authorization to exercise a specific power, all that the municipal corporation shall be obliged to do is to prove that it has not been forbidden to act by the legislature of the state, either directly, or indirectly through the grant of the power to some other authority. The result of the adoption of such a rule of law as to municipal powers is a presumption in favor of the right of a municipal corporation to take action. This presumption does away for the most part with the need of special legislation by the legislature of the state in which the corporation is situated. As a result of it the city may, when not forbidden by the state government, determine the sphere of its activity and may, when not subjected to the control of the state government, reach its determinations independently of the influence of any authority in the state government.

If no further step had been taken this method of solving the problems of municipal home rule would have seriously imperiled the unity of the state government; for, while it paid due regard to the local interests of the municipalities, it paid practically no regard to the interests of the state government as a whole. As a matter of fact, however, a further step has been taken. The legislative decentralization, which is characteristic of this method of solving the question, is accompanied by an administrative centralization. In accordance with the principles of this administrative centralization, the actions of municipal corporations, whether these actions are regarded as affecting the interests of the state as a whole or as affecting merely the interests of the municipality, are subjected to an administrative control on the part of the state. By means of the exercise of this control, it is possible for the central government of the state to prevent the municipality from taking action which would be inconsistent with the general policy of the state government, or which, in

the opinion of the state government, would be inexpedient for the municipality itself.

Let me make this point clear by a concrete illustration, which will perhaps be more forcible if it involves a comparison of European with American conditions.

By the American law no municipal corporation is recognized as possessing the power of issuing negotiable bonds without express or implied authorization of the state government. As a general thing the authorities of the state government have not granted to municipal corporations any general power of issuing such bonds. The legislature has either confined the municipality in the exercise of its borrowing powers to specific purposes, or has fixed a limit which the total amount of bonds issued by the city may not exceed. If a city desires to issue bonds for a purpose which has not been authorized, or in amounts in excess of the limits prescribed by the legislature, it is necessary for such city to obtain legislative authority in order that its action in issuing bonds shall be regarded as legally valid. The control which the state legislature thus exercises over municipal corporations is much more extensive than at first sight appears; for, in the conditions of modern life, cities are unable to undertake many of the enterprises which it is necessary that they shall undertake without exercising the borrowing power. In determining whether it shall give the city the desired authorization, the legislature may of course be governed by its view of the expediency of the proposed undertaking considered apart from the financial side of the question. Thus, it may refuse its consent to an issue of bonds for a municipal electric light plant because it believes that electric lighting is not a proper function of city government. Such is the method which has been adopted in the Anglo-American law for preventing the city from exceeding its power or taking unwise action.

In continental Europe, on the contrary, in accordance with the principle of law governing the relations of municipal corporations, a municipality has generally the power to enter upon such undertakings as electric lighting without obtaining the special permission of the state government. It has also the gen-

eral power to borrow money and issue negotiable securities. The law regulating municipal corporations provides, however, that this power, whose exercise by the city is recognized as perfectly proper, shall not be exercised in specific cases or beyond specified amounts except with the approval of the central administrative officers of the state government. Under such conditions the state government may indeed refuse its consent to a proposed loan for a particular purpose because it disapproves of this purpose, but it may not prevent the city from acting as it wishes if the proposed enterprise does not involve the exercise of the borrowing power. The state control over cities on the continent is, as compared with the state control in the United States, administrative rather than legislative in character, and it aims to prevent municipal extravagance rather than substitute the state judgment for the municipal judgment as to what it is expedient for the city to do.

If we compare these two systems of securing municipal home rule, particularly from the point of view of the interests of the cities, it can hardly be questioned that the continental European system has one great advantage: it encourages the municipal corporations to enter fields of activity which, under the Anglo-American system, it is difficult if not impossible for them to enter. A comparison of municipal government in this country and in continental Europe will reveal the fact that the sphere of activity of European municipalities is much larger than that of American. Much more is left in this country to private corporations and private individuals than in Europe. Of course it would be improper to say that the greater extent of European municipal activity is due entirely to the methods which have been devised for regulating the competence of municipal corporations. The great extent of European municipal activity is in large part due to the different ideas which prevail on the continent of Europe as to the propriety of governmental action in general. It cannot, however, be doubted that the methods adopted for permitting municipal bodies to determine their own sphere of activity has had an important influence upon the solution of the question. Take, for example, the present position of the city of Chicago. As is well known, the people of that

city have affirmed by a large vote the expediency of the municipal ownership and operation of the street railway system. They are, however, almost as far from the realization of their purpose as they were before this vote was cast, because of the extremely narrow financial resources of the city. In this instance the narrowness of the financial resources of the city is due not altogether, if at all, to the attitude of the legislature of the state of Illinois, but rather to the attitude of the people of the state as exhibited in the state constitution, which seriously limits the debt-incurring capacity of the city as well as its tax-levying power.

The continental method of assuring to cities a reasonable home rule is to be preferred, not only because it would appear to afford them greater freedom of action, but also because the control over those functions of government attended to by city authorities which is exercised by the state is, under the continental method, less liable to be influenced by partisan political considerations. This is so because the legislature, which under the American system exercises the state control over cities, is, and must of necessity be, the most distinctly political body in the state. It is in the legislature that questions of state policy must be determined. In the elections to the state legislature, party influences must be controlling. It is almost futile to expect that a body whose members are selected as a result of a distinctly political struggle and whose functions are so exclusively political in character, shall, when it comes to exercise its control over cities, cease to be governed by partisan political considerations. That a large portion of the legislation of the American commonwealths with regard to city affairs has been and is actuated by such considerations is a fact so well known that neither evidence nor illustration is needed; it is a fact of which public opinion takes judicial notice.

While of course it would be futile to expect that, under the conditions which exist in American political life, a control exercised over the cities by the central administrative officers of the state would be absolutely uninfluenced by partisan political considerations, it is none the less true that administrative officers of the state government are less liable to be governed by such

considerations than is the legislature. Acknowledgment of this fact is made by practically every one who has endeavored to obtain a reform in the educational and charitable administration, where that reform has consisted in endeavoring to get these branches of administration out of politics. In almost all cases the attempt is made to get these branches of administration out of the control of the legislature and into the control of state administrative officers. If we may judge by the testimony of those who have been influential in securing such reforms, it is safe to say that the means adopted have been measurably successful in attaining the end desired.

The results of our examination of the problem may be summed up by saying that the only functions of government discharged within the cities to which the principles of municipal home rule are applicable are those which, at a given time, have an interest which does not transcend the limits of the city; that, in a broad way, such matters may be embraced within the general term municipal improvements; that the proper means of securing the desired home rule with regard to such matters is to recognize that the municipality is an authority of general powers, subject, however, in the exercise of these powers, to state control; and that this control should be administrative rather than legislative.

Such a complete reversal of American policy as the adoption of these recommendations would involve may be regarded by many as something in the nature of a counsel of perfection, and the recommendations themselves may be looked upon as possessing such an academic character as to have no practical importance. In a measure such a criticism would be true. At the same time it is well to remember that the tendency of many, if not of most, of the constitutional provisions which have been adopted in the hope of curbing the power of the legislature over cities has been to widen more and more the powers of the cities in determining the policy which they wish to pursue. It is well to remember, further, that the extremely decentralized character of the original administrative system of the American state is gradually disappearing. In matters of public health, of education, of charities and correction, the central administration of

the states is receiving more and more power, while a movement is noticeable towards subjecting the accounting operations of cities to central administrative control. It is, therefore, true that the trend of American administrative development is in the direction of adopting the continental principle to which attention has been called. While it may be foolish to expect that all the steps necessary to the adoption of the recommendations which have been made will be taken in the immediate future, it is not extravagant to believe that in the more distant future the changes which have been outlined will be made. In the meantime it would be well for those who believe in municipal home rule as to those matters to which it is applicable to bend their efforts towards securing a further diminution of the powers of the American state legislatures. The most successful scheme, on the whole, which has yet been devised is probably that to be found in the Missouri constitution of 1875, which has already found so wide an acceptance in the states of the Pacific coast.

FRANK J. GOODNOW.

HOW ENGLISH TOWNS ARE MANAGED¹

IT is now common knowledge that the people of the towns of Great Britain enjoy a better administration of their public affairs than our townsfolk have obtained. For illustration, let us take an ordinary manufacturing town of medium size, to which a traveler would ascribe no pretension of superiority in any respect. To strengthen the illustration, it shall be a town as nearly as may be like Jersey City or Newark, New Jersey, in size and circumstances. The city² of Nottingham, situated

¹ The greater part of this article was delivered as an address before the board of trade of Jersey City in February, 1904. The information respecting the city of Nottingham was derived from a short visit there in the summer of 1903. For much of it the author is indebted to the courtesy of Mr. F. I. Fox, assistant accountant of that city. The statements respecting its finances are taken from the city's official abstract of the corporation accounts for the year ending March 31, 1903. The published reports and accounts for 1903 of the city's school board and board of guardians of the poor and water department were also examined. The pound sterling is reckoned in all cases at five dollars. Mr. Fox has had the kindness to read the manuscript of this article, including these notes, and the statements and figures respecting Nottingham have been made to agree with his corrections.

Among the books consulted in the preparation of the address were the following: M. D. Chalmers, Local Government (London, 1883); Edward Jenks, English Local Government (London, 1894); W. B. Odgers, Local Government (London, 1901), A Century of Law Reform (London, 1901), Report of the Local Government Board for 1900 (London), The Municipal Year Book (London, 1903); M. R. Maitbie, English Local Government (New York, 1897); Albert Shaw, Municipal Government in Great Britain (New York, 1895), Municipal Affairs (New York, 1897-1901). A graphic account of the working of an English town government is given by Elsie Watson, in "The Municipal Activity of an English City," POLITICAL SCIENCE QUARTERLY, vol. xvi, pp. 262 *et seq.* (1901).

The figures respecting the finances of Jersey City and Newark are taken from the comptrollers' reports of those cities, supplemented by explanations from Mr. George R. Hough, comptroller of Jersey City, and Mr. George Forman, auditor of Newark, in personal interviews.

² All the incorporated towns of England are called "boroughs," and it is of these only that this article treats. The word "city" is a sort of honorary title. A borough is called a city if it is the seat of a bishop and has a cathedral, or if the title of city has been specially conferred upon it. That is all that distinguishes a city from any other municipal borough. Very little that is said in this article applies to London. The organization and administration of that metropolis are altogether exceptional.

about 126 miles north and west of London, covers a territory of about seven by three and a half lineal miles. Jersey City covers about six and a half by three and three-quarters miles in extreme length and width. Like our two cities, Nottingham contains much land cultivated by the farmer and market gardener. Like them it is also a manufacturing town, and is a centre for two or three important railways. Its population in 1901 was 239,752, about the same as that of Newark (246,070 in 1900) and not very much larger than that of Jersey City (206,433 in 1900). It is growing rapidly; the increase in the last decade was twelve per cent and since 1870 over 170 per cent. Moreover, its area is now more than five times greater than in 1870.

It is not a beautiful nor even a pretty town. An American visitor is rather repelled by the monotony of red brick buildings, by the high brick walls about the grounds of residences and, in the town's centre, by the tangle of narrow, winding streets. That part bears ear-marks of mediæval times; for its history begins before the Conquest and its first charter was granted more than 700 years ago.

What have the people of Nottingham done in these rather unpromising circumstances to make their town a desirable place to dwell in? They have paved their streets well and evenly with stone or with macadam; they use no cobblestones. They have also clean streets. I rode about the city for some hours, through lines of shops, of stores, of fine dwellings, through the slums also, taking special note, and I saw not one ill-paved or dirty street. Litter there was on some of them; small bits of paper, scattered straws and the like. But it was the litter of the hour or of the day; none of the matted, sodden stuff, the product of days or weeks of neglect, with which we are familiar. The street cleaning is done by the city itself, with its own teams. Part of the garbage which it collects from streets and houses is sold, part is burned in destructors. These destructors are owned and operated by the city. There is a system of sewers, of course, and the river Trent skirts the town, but the sewage does not go into the river. It goes to a sewage farm a few miles out of town, where it is disposed of by downward filtra-

tion and irrigation. This farm is owned and operated by the city. It contains nearly 2,000 acres. The sale of its products in the fiscal year 1902-03 included over \$35,000 for livestock; over \$12,500 for butter and milk; over \$7,000 for other products. The revenue so derived about equaled the cost of operating the farm. The interest on the bonded debt incurred to purchase and equip the farm, and some other charges, were paid from the rates. In England all local taxes are called "rates."

The city owns and operates a water-plant, supplying water to the people at a total cost of something under \$500,000 a year, including interest on the water debt and charges for depreciation and sinking fund.¹ The city also owns and operates a gas-plant, supplying gas at a maximum charge of 60 cents per 1,000 feet. It owns and operates the plant which supplies the town with electric light and power. It owns and operates an excellent electric street-railway system. The fares vary from two cents to eight cents, according to the distance traveled. The average fare, I think, must be considerably under five cents, but no transfers are allowed. The city also owns and operates the markets. It owns, maintains and leases to tenants a block containing about 80 flat-houses, called "artisans' dwellings," built by it for the use of laboring people; and also tracts of land containing about 370 small houses, which it rents to poor people on weekly payments. Much of the land on which these latter houses stand the city has owned for centuries.

The artisans' dwellings pay only the cost of maintenance and repairs; interest and sinking-fund charges are provided from

¹ The cost of the water department for the year ending March 25, 1903, was between ninety and ninety-five thousand pounds (\$450,000 to \$475,000), including interest on the water debt and sinking-fund charges. The cost of Newark's water department (1902) was \$828,787; cf. Comptroller's Report, p. 67. That of Jersey City (1902-03) was about \$945,000; cf. Report of the Board of Street and Water Commissioners, 1903. Nottingham is planning a new water supply, which will, no doubt, increase the annual cost.

The water rates for dwellings are upon a scale based on the annual rental value of each house. A house without bath or water closet, of a rental value of £50, pays £2, 2s. a year. A bath and water closet cost only £1 extra. For business purposes, water is generally sold by meter.

the rates. The other properties, that is, the markets, land and houses (except artisans' dwellings) and the water, gas, electric and tramway plants, are so managed that, after paying costs of maintenance and repairs, interest, sinking-fund charges upon the funded debts incurred from them severally, and after setting aside reserve (depreciation) funds for all of them, except markets and houses, they yielded the city, in the fiscal year, 1902-03, a net revenue of over \$300,000.²

¹The net revenues from the several properties of the city contributed in relief of rates for the year ending March 31, 1903, as shown in the Abstract of Accounts are:

Markets and fairs [p. 18] £5,181
Land and Houses:

Chamber estate [p. 16] £12,601

Bridge estate [p. 170]: Receipts £9,902

Payments, interest and sinking fund 7,298

_____ 2,604

£15,205

Freeman estate [p. 176]: Excess of expenditure (including interest and sinking fund charges) over income: *deduct* 4,537

10,668

Water department [p. 208] 5,000

Gas department [p. 208] 24,516

Electricity department [p. 208] 6,500

Tramways department [p. 208] 12,000

Contributed to city in relief of rates £63,865

Of the city's funded debt, about £70,800 is charged against the markets and fairs and the Chamber estate (p. 287); but interest and sinking fund charges upon that part of the debt do not appear to be charged against the income from those properties. Apparently a deduction of some £2,500 for those charges should be made from the above stated net revenues. Interest and sinking fund charges are first deducted from each of the other accounts above mentioned in ascertaining its net revenue. Also deducted are reserve (depreciation) fund charges on each of the following accounts:

The electricity department shows a reserve (depreciation) fund of £15,480, against a capital expenditure of £374,478; about 4 per cent (pp. 228-9).

The reserve (depreciation) fund of the tramways department is £20,156, against a capital expenditure of £534,386; about 3.7 per cent (pp. 250-51).

The reserve fund of the water department is £17,442, against a capital expenditure of £1,007,881; about 1.7 per cent. Cf. Statement of Accounts of Water Department, March 25, 1903, p. 7. I have not seen the accounts of the gas department and do not know the amount of its reserve fund.

Although the Freeman estate account showed a deficit for the year stated, its balance sheet showed an excess of income over expenditure (presumably for the whole period the accounts have been kept) of £2,964.

The city has also a good system of public education. The English system differs so much from ours that space cannot be taken here to describe it. It is enough to say that compulsory education exists and is enforced for all children within the school age, which ends with the fourteenth year; that education is practically free of charge in the primary schools, while in the higher schools the charge is so low as to be almost nominal; and that, in effect, the whole school population is either in regular attendance or absent for reasons satisfactory to the authorities.¹ Under the English system, a considerable proportion of the cost of the city educational department is contributed from the national treasury.

The city also owns and manages, at public cost, a school of art and design; a school for technical education; a university college at which students may qualify themselves to pass the examination of the University of London and to take the degree granted by the latter; a large free public library; a large museum of natural history and a noble art gallery. All of these are housed in spacious public buildings; and the collections in the museum and art gallery are large enough to surprise an American unaccustomed to such municipal luxuries. The art and technical schools and the university college collect moderate fees, and they receive a considerable contribution from the national treasury; but most of the cost of maintaining these departments of education is paid from the revenues which the city derives from the profitable undertakings mentioned above and from the rates.

The city also maintains two lodging-houses, the income from

¹ The Final Report of the School Board, September 29, 1903, states (p. 50), "that practically all the children in the city of school age are either actually in school or excused for some satisfactory reasons." The same report shows (p. 52) that the "number of children on rolls of public elementary schools" is 44,689, and that the number "in average attendance" is 38,695. "Percentage of average attendance compared with number on roll, 87.1." These figures were for the quarter ending September, 1903. The population at that time was 243,191. The enrolled pupils were 18.5 per cent and the average attendance 16.3 per cent, of population. "No fee is charged in any of the ordinary council schools," but in certain specified "higher elementary mixed schools" the fees are from 10d. to 5s. per quarter. Cf. Scale of Teachers' Salaries, &c. (1903), p. 17.

which falls a trifle (about \$170) below the cost of maintenance; a public cemetery, which is self-supporting; public baths; an "epidemic" hospital and a lunatic asylum.

The city's public parks include an arboretum of some sixteen or seventeen acres in the centre of the town, filled with flowers, shrubs and trees; a large open tract, once a race-course, now a park, not yet very much improved; and a handsome drive, lined with trees, along the embankment of the river Trent upon the outskirts of the town.

There are also the usual departments of police and of fire.

How much does all this cost, in taxes? and how does that burden compare with the cost, in taxes, of local government in Jersey City and Newark? In making the comparison, it is necessary to include the cost to the cities of county government, because, in Nottingham, that item cannot be separated. For the territory within that city is a county, under the government of the city authorities, who maintain the full county machinery for the relief of the poor and the administration of justice—poor-house, asylum, hospital, courthouse and jail. *In the comparison, it must also be noted that each of the three cities receives part of the cost of its local government from state taxes collected by the state throughout its territory. Out of the sum so collected, the state returns to each city a part which is designed to be proportioned to the amount contributed by the taxpayers to the state tax, or to the property within that city taxed for state purposes, or which is repaid on some other principle of distribution. Familiar instances to the people of New Jersey are the return by that state to its cities of part of the tax collected upon railroad property and upon certain franchises, and the distribution by the state to the cities of the state school tax. From the comparison, finally, I exclude the water-rates in the three cities, because these rates are rather a compensation for goods sold than a tax, and because in each city the water supply is self-sustaining. Omitting water-rates, the total sum taken by taxation from the taxpayers of the city and from the taxpayers of the state to pay the cost of local government, was:

In Newark (fiscal year, 1902)	\$3,861,066
In Jersey City (fiscal year, 1902-03)	3,292,317
In Nottingham (fiscal year, 1902-03) (£453,278)	2,266,390

In each case these figures include, as far as I can learn, the total cost of local government, *i. e.*, the cost of caring for the poor, of administering justice (except some judicial salaries), of public education and of all other departments of municipal affairs which are maintained by taxes, except the cost of the water supply. The share of taxes paid by Newark for county purposes, exclusive of the state school tax, was \$687,992; by Jersey City, \$550,008.

The sums contributed by the state from state taxes to Nottingham and to Newark were nearly equal; to Jersey City, considerably more. In each case it was:

To Newark	\$454,952
To Jersey City	675,753
To Nottingham (£96,684)	483,420

In each case is included the sum contributed by the state for educational purposes.¹

¹ Following are the items given me by the city auditor of Newark and the controller of Jersey City:

NEWARK. City tax levy, including poll tax	\$2,718,122
County tax (exclusive of state school tax)	687,992

Total raised within city for city and county purposes	\$3,406,114
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Add sum received from state treasury:

From state railroad tax	\$13,387
From state franchise tax	10,120
From state school tax	431,445
	<hr/>
	454,952

\$3,861,066

\$2,066,556

550,008

\$2,616,564

Add sums received from state treasury:

From state railroad tax	\$375,000
From state franchise tax	52,000
From state school tax	248,753
	<hr/>

675,753

\$3,292,317

NOTTINGHAM. The figures given are from the Abstract of Accounts, from the Re-

But how much must the townspeople pay in local taxes? Deducting these state contributions, the cost of local government, including county government, paid by the townsfolk in local taxes is:

In Newark	\$3,406,114
In Jersey City	2,616,564
In Nottingham (£356,594)	1,782,970

The people of Nottingham thus pay in local taxes for local government, including county government, about three-fifths of the amount paid by the people of Jersey City, and about one-half of the amount paid by the people of Newark, for the same purposes.

In making these comparisons however, some caution is necessary. The general scale of wages and salaries (except high official salaries) is much lower in England than in New Jersey. There are differences also in other conditions. For instance, the fire department of Nottingham is a small affair compared with ours; which may be accounted for, in part, by the absence of wooden buildings there. Practically all buildings in Nottingham are of brick or stone, and roofs are generally of slate or tile. But when all allowances are made, it is pretty certain that the taxpayer of Nottingham gets more for his money than

port of the Guardians of the Poor, 1903, and from the Final report of the School Board, 1903.

The general district rate, i. e., the city tax levy [p. 60]	£225,480
Rates for school board [p. 65]	65,000
Rates for guardians of poor [their Report, p. 15]	66,114

Total raised by local rates for city and county £356,594

Add government grants:

For guardians of poor [p. 205] £13,953

For technical school, school of art, university college [pp.

114, 116, 132, 203] 11,944

From taxation of local licenses, probate duties, excise duties (in relief of local rates) 22,500

For police superannuation fund 1,429

To school board directly [their Report, p. 58] 46,860

Total from national government 96,684

£453,278

the taxpayer of Newark or Jersey City, and that his advantage is due to better organization and better administration of municipal government.

The distribution of the burden of taxation is based upon a totally different principle from that adopted here. Local taxes or rates are assessed in England exclusively upon rentable real estate and in proportion to the amount of yearly rents which the property will bring. Personal property and vacant lands incapable of being rented are not assessed for local taxes. As the whole burden of local taxation falls upon rentable properties, the taxes upon these are higher than here; but on the other hand, the unhappy owner of useless, vacant land in our cities, if he could transfer it to Nottingham, would be altogether relieved from local taxation. Agricultural lands are assessed for rates at one-fourth their rental value.¹

What are the debts of the cities?² The sinking-funds being deducted, the respective debts are:

Newark (January 1, 1903)	\$15,444,798
Jersey City (December 31, 1902)	16,039,617
Nottingham (March 31, 1903) (£4,987,625)	24,938,125

¹ The local rates in Nottingham for the year 1902 were: for general municipal purposes, 4s 8d; for school purposes, 1s 6d; for poor relief, 1s 7d; making a total of seven and three-quarters shillings in the pound; which is about 38 per cent. A property assessed at a rental value of £100 a year must thus pay in rates about £38. The assessors usually assess at somewhat less than the actual rental value. This difference between actual and assessed rental values varies in different towns. I was informed that a 15 per cent deduction from actual values would probably leave nearly the average of the assessed values. The total rateable value of the city is £1,010,000. This is the assessors' valuation of the total yearly rentals of the city for the purpose of local taxation. The assessment is made against and the tax is collected from the occupier of the property, whether owner or tenant. As tenants must pay the rates upon the property they occupy, rents are much lower than in America. The land-owner, therefore, pays the rates (or his share of them) indirectly. The rates are collected very closely. In the year ending March 31, 1903, only £500 is set down as "irrecoverable," and only £545 as "arrears carried to next year" (pp. 60, 66).

² NEWARK. *Report of Comptroller for year ending Dec. 31, 1902.*

Total funded debt	\$19,049,000
Less sinking fund	<u>5,550,202</u>
Net funded debt, including water and market debts	13,498,798
Add temporary loans [p. 4]	<u>1,946,000</u>
	\$15,444,798

Though the total net debt of the English city is much the largest, yet when allowance is made to each town for the part of its debt charged against self-sustaining undertakings, Nottingham's debt is nearly the same as that of Jersey City, though larger than that of Newark. For each city carries on one or more profitable or self-sustaining business undertakings, for which a stated part of its debt is incurred and which pays the interest and will finally pay the principal of the part of the debt charged against it.

The only self-sustaining business undertaking in Jersey City is the water supply; Newark has the water supply and the market; Nottingham the water supply and the several profitable businesses mentioned above. Deducting the part of the net

Deduct water debt [p. 12]	\$9,847,000
Less sinking fund	1,879,803
	<hr/>
	\$7,967,197
Deduct debt for market	\$335,000
Less sinking fund	147,610
	<hr/>
	187,390
	<hr/>
	8,154,587
 Net debt to be paid by taxation	\$7,290,211
<i>JERSEY CITY. Report of Comptroller for year ending December 1, 1905.</i>	
Total funded debt, including \$709,096, "improvement certificates" and \$1,244,588, "temporary loan" bonds [p. 5]	\$20,064,393
Less sinking fund [p. 6]	4,024,776
 Net debt, including water debt	\$16,039,617
Deduct water debt [p. 31]	\$5,155,000
Less sinking fund	797,403
	<hr/>
	4,357,597
 Net debt to be paid by taxation	\$11,682,000
As part of the assets against their debts, the Comptrollers' Reports of Newark (p. 4) and Jersey City (pp. 7, 43) show arrears of taxes and of assessments for special public improvements (both are liens on lands), as follows:	
NEWARK. Taxes	\$655,334
Assessments	1,627,704
	<hr/>
	\$2,283,038
JERSEY CITY. Taxes (arrears for many years)	\$4,487,335
Assessments	2,268,800
	<hr/>
	\$6,756,135

debt incurred for these purposes, the remainder which must be paid by taxation is:

In Newark	\$7,290,211
In Jersey City	11,682,020
In Nottingham (£2,221,218)	11,106,090

To sum up the results, it appears that the people of Nottingham get much more municipal service than the other two cities give their people, and that the cost of that service, in taxation, is very much less. Against this showing we must allow for certain differences in economic and other conditions. In respect of the amount of the debts which must be paid by taxation, that of Nottingham is nearly the same as that of Jersey City, but much more than that of Newark; but the English city has very much more to show for its debt in useful but non-revenue-producing institutions.

For the following figures I am indebted to the kindness of Mr. Fox.

NOTTINGHAM. *Abstract of Corporation Accounts, March 31, 1903.*

Consolidated 3 per cent stock	£3,749,105
Mortgage loans	774,081
Mortgage loans, gas department	142,900
Gas debentures	£61,291
Gas annuities	344,850

Water annuities	406,141
	350,862

Less net sinking fund	£5,423,089
	435,464

Total net debt	£4,987,625
From total net debt	£4,987,625
Deduct portions charged against self-sustaining properties, <i>viz.</i> :	
Of consolidated stock	£1,867,186
Less corresponding portion of sinking fund	155,545

	£1,711,641
Of gas loans, debentures and annuities	£899,903
Less corresponding portion of sinking fund	71,235

	828,668
Of mortgage loans	226,098

Net amount charged to self-sustaining properties	2,766,407
Amount of debt to be paid by taxation	£2,221,218

Who manages all this business in Nottingham? The organization of city government there is extremely simple. The city council manages the whole of it, except the care of the poor. The latter duty is charged upon a board called the "guardians of the poor," who are elected by the rate-payers of the city. Prior to 1904 there was also a separate school board elected by the rate-payers; but that board, in all English incorporated towns, has recently been abolished, and its duties have been transferred to the council. The councillors are elected for three-year terms by the rate-payers, male and female. No one may vote unless he or she pays rates. The election is by wards, each of the 16 wards electing three councillors, making 48 in all. The councillors, sitting in council, choose sixteen persons called aldermen, who hold office for six years. Aldermen and councillors have precisely the same powers and functions in the administration of the city's business. They sit together and act as one body. As such, they are called the town council. They choose one of their own number as mayor. (They may choose one not of their number, but they never do.) He presides at their meetings and represents the town on public occasions, but he has no important administrative powers in the city's business other than those held by every member of the council. Every department of city affairs—police, fire, tramways, water, gas and every other—is managed by a committee of the council. These committees are responsible for the conduct of their several departments; but their acts must be approved by the council. At the head of each department the council places an officer, selected by the appropriate committee, whose experience is expected to qualify him for that special work. He acts under the supervision of the committee for that department. All appointments to office are made by the council, and all salaries are fixed by it. Very few of the offices are established by law; nearly all are created, as well as filled, by the council. In every case (except, of course, that of the mayor and members of council) the tenure of office is at the pleasure of the council; but custom insures the continuance of the officers in their places as long as they give satisfaction in the performance of their duties. The same rule of permanent tenure, subject to

a satisfactory discharge of duty, governs the employment of all inferior employees. Change of officers or of employees for partisan reasons does not occur. The business of the city is conducted upon the same principles as the business of any large private corporation. The council is the board of directors, the rate-payers are the stockholders.

There is nothing exceptional in the case of Nottingham. Excepting London, every one of the three hundred and more incorporated towns of England is organized under the same general municipal law, with the same form of government and nearly the same general powers, though many of them have certain special powers given by special laws. Moreover the form of organization and the character of the general powers do not depend upon the number of inhabitants. Chippenham, with less than 5000 people, has the same form of government and much the same general powers as Manchester and Birmingham with populations of over half a million each. Pretty much all of the larger towns offer to their people advantages and public services similar to those found in Nottingham. The unincorporated towns have a somewhat different form of government, but their affairs are administered upon the same principles.

If you read what is written in England about municipal government, and if you talk with the people there upon that subject, you will rarely hear complaints of instances of corruption, and never complaint of general corruption or general mismanagement. The standard of public administration to which the people are accustomed has created a public sentiment which will not tolerate either corruption or mismanagement. The only complaints that I heard concerned the increasing rates and the growth of municipal debts. There is not space here to consider the policy of municipal ownership and management of public service undertakings. It is a policy of recent origin in England, and public opinion is still divided respecting it; but there is no question that the people of the towns generally approve it or acquiesce in it, for it is fast becoming a general municipal policy and there appears to be no organized effort to check it. That very fact bears strong testimony to the excellence of the administration of town affairs. It would be impossible to man-

age these great business enterprises with satisfaction to the rate-payers unless the management were conducted by experienced men of special qualifications, following a continuous policy in developing their work. These conditions of success are possible because there is a high civic standard among the people and because of a few simple principles of municipal government which they apply, namely:

(1) *The principle of selection for fitness in filling offices, and permanent tenure while fitness continues.* This principle insures two things, expert knowledge and continuity of policy in planning and executing great municipal enterprises, and a motive for every officer and employee to give undivided attention to the duties of his place in order that he may retain it.

(2) *The principle of non-interference by the legislature in municipal affairs.* Although Parliament still enacts from time to time special local bills to confer particular powers upon certain towns, yet that practice is decreasing; and in contrast with the reckless intermeddling of our legislature in municipal affairs, it may be said that Parliament's policy in this regard is one of non-interference. It never, by special statute, changes the frame of town government in any respect, nor creates nor abolishes a town office, nor fixes the amount of a municipal salary. Such local municipal acts as are passed are generally designed to confer some enlargement of municipal power upon towns which petition for it. But the powers conferred by general law upon incorporated towns are so much larger than those usually enjoyed by cities here that there is less occasion for applications for special powers. The principle of local self-government, of local self-responsibility, is carried much further in England than here.

(3) *The principle of central administrative control.* We know, to our great cost, altogether too much of central legislative control. But the principle of central administrative control is a very different thing. The control exercised by a state board of taxation over local taxing authorities, and that exercised by a state department of education over local educational authorities, are instances with which we are familiar. The principle implies general laws upon the given subject with a

permanent state board authorized to see that those laws are obeyed by the local authorities, and authorized also to exert some limited measure of discretionary control over their acts. Such a board naturally adopts a policy. It is guided by certain principles of action. It must give public hearings before deciding the public disputes submitted to it. It acts under a sense of responsibility. It must make frequent reports and explain and justify its official doings. State control of this kind is as far removed from the capricious and irresponsible legislative meddling from which we now suffer as is the judicial control exercised by state courts.

The English have a Local Government Board which exercises this administrative control over all the municipalities of Great Britain. The president of it is a member of the cabinet. The board and its work are a growth of over half a century. It has become a great state department, whose duties can not here be recapitulated. It has accumulated and published, in its reports, an enormous mass of valuable information respecting the conditions of municipalities. It is consulted by and is constantly advising local authorities. Through it every town has access to the experience of other towns. The best managed may become a model for the others. All local bills introduced into Parliament are referred to this board for examination and report. Through its auditors, it audits the accounts of smaller municipalities (not those of incorporated towns) and may disallow illegal items. If a town desires to raise a loan it does not usually ask for a special law to authorize it (though it may do so) but applies to the Local Government Board, which, after a public hearing and, if necessary, an investigation of the circumstances, grants or refuses leave for reasons stated. Every municipality, including incorporated towns, must submit its annual financial account to this board. The board has large investigating powers. With all this, however, there is very little power of interference with local self-government and local self-responsibility. The initiative is with the people and their local officers, and there is hardly any check upon their power of expenditure, except in the incurring of debt.

But the civic conditions which I have described and the

healthy public sentiment which makes them possible are of recent growth. In 1830 the conditions of English towns and town government were far worse than any conditions generally prevailing in our cities at present. Those conditions can be understood only when considered in the light of English history. Prior to the American Revolution the English were a rural, agricultural people. In 1750 they numbered only about six or six and a half millions. Relatively few Englishmen then had seen what we should today call a large town, for there was probably not a town in England, except London, with more than 50,000 inhabitants. There were not only no railroads but no macadamized roads, and no good wagon roads at all. The people staid at home for want of means to travel. There were no canals, there was no steam power, there were no factories such as we should now call by that name. England's colonies were infants, and she had then no maritime supremacy, no great foreign trade. In 1770 that trade was only about 145 million dollars. It was not till the last twenty or thirty years of the century that there came the inventions of Arkwright and Crompton in spinning and Watt's invention of the steam engine, which were among the chief agencies that created a new economic world on this planet and changed, within a lifetime, the conditions of civilized life more than they had been changed in centuries before. These led the way directly to the factory system, to the steamship, the railroad: to Birmingham and Liverpool: to the British empire of trade. In the first fifty years of that century, England's exports of cotton goods doubled; in the last twenty years of it they increased eightfold. During those last twenty or thirty years a great system of turnpikes and canals was begun and partly built, and internal travel and transportation on a large scale became possible. During the first thirty years of the nineteenth century the "industrial revolution" in England became an accomplished fact. The English, having been an agricultural, suddenly became a manufacturing people. The factory system arose and crowded the population into towns. There was no local governmental machinery capable of regulating the new conditions, and for a long time there was no thought of adequate regulation. In his

History of England, in which most of the above mentioned circumstances will be found detailed, Mr. Lecky says:

The sanitary neglect, the demoralization, the sordid poverty, the acute and agonizing want prevailing among great sections of the population of our manufacturing towns during the fifty or sixty years that followed the inventions of Arkwright and Crompton can hardly be exaggerated. The transition from one form of industry to another, the violent fluctuations of wages and of work, the sudden disruption of old ties and habits and associations, the transfer of thousands of female spinners from their country homes to the crowded factory, the vast masses of ignorance and pauperism that were attracted to the towns by vague prospects of employment, have all led to a misery and demoralization of an extreme character.¹

The foregoing account may give a faint notion of the economic and social conditions of the towns in 1830. The governmental conditions were hardly better. The era of great municipal undertakings was not then thought of. In America New York and Philadelphia were country towns in point of government; and in England borough government, such as it was, had hardly any function which we now associate with municipal authority other than the management of the corporation's property and the making of by-laws concerning the conduct of the townsfolk. The town could undertake no public works, it could raise no rates or taxes, it had no control worth mentioning over police, sanitation or education. The explanation of these conditions is found in the history of the towns. In mediaeval times they had won, gradually and after centuries of contest with the crown, the right of choosing their own officers, of making by-laws and of acquiring and managing town property and certain charitable funds. But in the course of centuries the vigorous civic life of mediæval times died away. For the most part the towns became close corporations. The governing officers either held office for life, themselves filling vacancies in their own number, or they were chosen by a small body of electors, many of whom were not rate-payers. These

¹ Lecky, *History of England in the Eighteenth Century*, vol. vi, c. 23, p. 221. Cf. also Macaulay, *History of England*, c. 3.

were the "freemen" of the borough, and admittance to this class conferred the "freedom of the town." The value of this freedom consisted in local privileges and in the parliamentary franchise. The electors who chose town officers, or the officers whom they chose, elected members of the House of Commons to represent the borough. Officers and electors thus became counters in the game of national politics. In the general corruption prevailing in English politics for generations prior to 1830, these borough electors sank, very generally, into a contemptible class whose franchises were notoriously at the command of the politicians and owners of great estates who knew how to bring the needed influence to bear upon them. To-day the basic principle of municipal government is public service; in 1830, the basic principle of borough government in England was individual privilege.

I copy the following description of English borough government as it existed early in the nineteenth century, from a lecture delivered in London in 1901 by Mr. W. B. Odgers, an eminent English barrister and legal author.

There were 284 boroughs or reputed boroughs in England and Wales. But in at least 32 of them municipal institutions were extinct, and in most of the others municipal life was dead. The great mass of the townspeople were excluded from corporate privileges and from any share in the government of the town. The power was entirely in the hands of a few councillors or corporators, who were for the most part self-elected and who held office for life. They were selected on political grounds; so were the borough officers; so were the freemen. The corporate revenues were expended and the local charities manipulated to serve political ends. Municipal functions were almost entirely neglected, and jobbery, corruption, and oppression were almost universal. Everything was prostituted to maintain the political ascendancy of a party or the political influence of a noble family. Never again, I trust, will any of our local institutions sink to so degraded a level. In Plymouth, where the population was 75,000, the number of freemen was only 437, of whom 145 were non-resident. In Ipswich, less than two per cent of the inhabitants enjoyed corporate privileges, and of that two per cent a large number were paupers. In Portsmouth, with a population of 45,000, the number of freemen was only 102. As a rule,

the numbers of the privileged freemen were strictly kept down, but political exigencies sometimes created an exception. Thus at Maldon, where the average admission of freemen was seventeen per annum, 1000 new freemen were created during the election of 1826 for purely election purposes. The freemen in many boroughs enjoyed exclusive trading privileges and were exempt from borough tolls and market dues. In Newcastle his exemption from these tolls made a difference to one merchant of £450 per annum. In Liverpool the tolls were even heavier. Corporate funds were freely spent in political corruption. During the election of 1826 the corporation of Leicester spent £10,000, and even mortgaged a portion of their property, to secure the return of a political partisan. When not required for electioneering the income of the corporate property was frequently expended in feasting. The same man held several corporation offices and appointed deputies to perform the duties. Members of the corporation entered into contracts with the corporation, and lands belonging to the corporation were let to members of the corporation on terms very favorable to the members. Only 28 boroughs published any accounts of their expenditure.¹

In these conditions the work of municipal reform must have seemed far more discouraging to Englishmen, in 1830, than the same work in our cities can now appear to us. But within the span of a single lifetime, an almost incredible transformation was effected. The series of reforms which have wrought such a marvelous change in the political and social relations of the people, began in 1832, with the Reform Act. A commission was appointed soon after to inquire into the condition of the boroughs; and their report (from which most of the facts stated by Mr. Odgers are derived) was followed in 1835 by a general municipal corporations act. This act abolished the old municipal abuses; gave the elective franchise to all inhabitant rate-payers; vested the powers of borough government in mayor, aldermen and council, and shortened their tenure of office to a few years. This act, amended and revised, is the law under which all the incorporated towns of England, except London, are now organized. But the act made no provision for great public works nor for the great departments of municipal government. When it was enacted, these steps in muni-

¹ W. B. Odgers, *A Century of Law Reform* (London, 1901), p. 257.

cipal development were hardly begun, and when they did begin, they were undertaken under special acts and by special authorities, like our park commissioners and other special boards with which we are familiar. With the developing needs of growing towns, a vast number of special local authorities arose with special local powers depending upon statutes which were local, or which dealt with special subjects, such as highways, cemeteries, public health and sanitation. In England, as well as here, there has been an era of local government by special laws. Gradually, however, English municipal legislation tended toward a uniform system; the special acts were from time to time consolidated or merged into general laws; special authorities were merged into the general town government; till it may now be said that in municipal boroughs all the important powers of municipal government, except the care of the poor, are vested in one political organ, namely, the town council.

Modern English town government dates from 1835, and good municipal administration has been a steady growth from that date to this; the whole history of both falling within an ordinary lifetime. The development of great public works is a practice no older there than here; and municipal ownership and operation of profitable undertakings have now only just begun.

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A SOCIALIST HISTORY OF FRANCE *

SOCIALIST writers have made varied and extensive contributions to the literature of economics ; and it cannot be denied that their criticisms and suggestions have greatly influenced the development of economic doctrine.¹ In the field of history Marx and his followers undoubtedly have helped to turn the attention of historians from purely political and diplomatic affairs to the more permanent and fundamental forces in the development and conflict of nations, but in this sphere the socialists have not been so productive. Apart from some disconnected studies, they have written little history. The reason for this is not hard to find. The immediate purposes of party propaganda are apparently not served by lengthy treatises on large historical themes ; and, generally speaking, the effective demand for such works would not justify their publication. Nevertheless, the avowed purpose of the Socialists to force a disintegration of the intellectual synthesis upon which the defence of the present order rests will compel them, in time, to re-open the whole question of historical interpretation and construction. The first attempt of this sort—the first attempt to rewrite history on a large scale—is made by Jaurès and his collaborators in their history of France since 1789. If the present plan is followed, the undertaking is to be a large one ; for five stout volumes, four by Jaurès and one by Deville, bring the story only to the close of the period of the Directory.

According to the introduction, the design of the work is to tell the people, the workmen and peasants of France, the story of their country from the eve of the Revolution to the present day, but with a propagandist and moral purpose. The underlying philosophy is that of Marx and Engels. The fundamental force in history is economic, but the complex phenomena of social life, as the authors insist, cannot be re-

¹ *Histoire Socialiste, 1789-1900. Constituante, Législative, Convention jusqu' au 9 Thermidor, par Jean Jaurès; Du 9 Thermidor au 18 Brumaire, par Gabriel Deville.* Paris, Jules Rouff & Cie. Vols. i and ii, 1316 pp., vols. iii and iv, 1825 pp., vol. v, 596 pp.

* Cf. Marshall, *Principles of Economics*, p. 64.

duced to an economic formula.¹ As it would be false and futile to deny the relation of thought and emotion to the economic system and the precise forms of production, so it would be puerile to explain summarily by the evolution of economic relations the entire movement of human thought (vol. i, p. 7). Moreover, with the development of society, consciousness will play an increasing part in the shaping of institutions and social life ; and in time man will rise from the kingdom of necessity to the kingdom of freedom (vol. i, p. 8). History must recount and explain the movements of the past ; but, according to Jaurès, it has also a moral function : it should inspire men to work for an ideal ; it should keep alive the memory of men who have done their duty as they saw it and without fear or hypocrisy.² For these reasons the volumes are dedicated to Marx, Michelet and Plutarch.

Thus restricted, the economic interpretation of history will doubtless be accepted by most scholars who avowedly aim at objectivity, though they may not agree that the historian should assume the duties of an ethical teacher—for when he undertakes such a function he usually degenerates into a partisan. Many scholars hold with the late Professor York Powell that the formation and expression of ethical judgments do not fall within the historian's province. Historians will differ, according to their class or personal prejudices, in their distribution of praise or blame ; and the inveterate and unwarranted suspicion which the socialist entertains concerning the intellectual honesty and moral probity of the bourgeoisie will strip the socialist Plutarch of almost all modern heroes.

Jaurès' first volume opens with a consideration of the causes of the Revolution. The elections and the *cahiers*, the revolutionary days from June to October, the organic laws, the civil constitution of the clergy and the nationalization of the church property, the federations and the flight to Varennes are the subjects of ten long and badly built chapters. In the review of the causes of the Revolution there is little that is not

¹ Jaurès, vol. i, p. 7: "La complication presque infinie de la vie humaine ne se laisse pas réduire brutalement, mécaniquement, à une formule économique." Similarly, Deville, vol. v, p. 1: "Si le fond économique sert de base aux phénomènes politiques comme aux autres phénomènes sociaux, il n'implique pas nécessairement la forme sous laquelle ces phénomènes se produisent."

² Jaurès, vol. i, p. 9: "Nous saluerons toujours, avec un égal respect, les héros de la volonté, et nous élèveront au-dessus des mêlées sanglantes, nous glorifierons à la fois les républicains bourgeois proscrits en 1851 par le coup d'état triomphant et les admirables combattants prolétariens tombés en juin 1848 . . . L'histoire ne dispensera jamais les hommes de vaillance et de la noblesse individuelles."

in accord with the conclusions of non-socialist scholars. There is a full account of the great variety of feudal burdens and of the position of the king, nobility and clergy in the old régime, but M. Jaurès does not regard the French people as the most downtrodden and oppressed on the earth. There were burdens enough, no doubt, but at the same time there were enough small holdings and enough savings hoarded up in spite of the taxes, to encourage the peasants to hope for still better things (vol. i, p. 28). The mediæval corporations which still existed were hindrances to free industry, but it is very easy to overestimate their importance (vol. i, p. 44).

For reasons of space, not for any narrow economic reasons, Jaurès neglects the great writers of the eighteenth century (vol. i, p. 752). He points out the close relation between freedom of thought in science and philosophy and the progress of industry. "The immobility of the economic life of the middle ages was connected with the immobility of its opinions (*de sa vie dogmatique*) ; and in order that modern production might develop all its energy, destroy all routine and break through all barriers, it was also necessary that modern thought should have all its freedom" (vol. i, p. 24). Moreover he recognizes the profound personal influence which the publicists exercised on the makers of revolutionary history (vol. i, p. 752).

The French state had been formed by monarchic centralization ; feudal and ecclesiastical privileges had been curtailed in the interests of the monarchy, but these privileges still weighed upon the people ; the bourgeoisie, increasing in numbers and wealth, arrived at a consciousness of class interests and of the possibilities of development which the old régime hampered ; financial difficulties precipitated a crisis ; the reigning monarch was incapable of founding a bourgeois state or meeting the crisis ; hence a political and social cataclysm which left elements of disorder and discontent upon which political intrigues could operate. Such in brief is M. Jaurès' thesis, and there is nothing in it that is particularly original or socialistic—it is a scholarly appreciation of the movement of historical forces.

These general conclusions on the development of revolutionary forces are supported, however, by a detailed analysis of economic conditions and a minute study of the growth of capitalism, especially in Lyons and Bordeaux. Jaurès describes and even names the leaders and organizers of great colonial and manufacturing enterprises, declaring that this catalogue is an enumeration of the forces which were to make the Revolution.

We must examine even to the detail of names, the growth of this daring and brilliant bourgeoisie, at once revolutionary and moderate, in whose name Vergniaud will speak. . . . What force, and what sap! How evident it appears that these bold bourgeois, who start and manage great affairs all over the world, will soon determine to conduct on their own account the general affairs of the country. How we feel that they will soon tire of the insolent guardianship of the indolent nobles, of the parasitical existence of an unfruitful clergy, of the wastefulness of the court and the arbitrary conduct of the governmental bureaus [vol. i, pp. 52, 53].

Here Jaurès is writing history—not a drama in which man seems to act automatically and according to approved philosophical forms. He has his hand on the pulse of true historical forces.

As a partial evidence that the bourgeoisie understood the fundamental nature of the conflict they were waging, M. Jaurès devotes many pages to Barnave, whose *Introduction de la Révolution française* displayed a remarkable insight into the economic causes of the struggle. Long before Marx, Barnave had written: "As soon as industry and commerce have entered into the life of a nation and have created a new source of wealth for the support of the working class, a revolution in political institutions begins. A new distribution of wealth produces a new distribution of power" (cited vol. i, p. 101).

With a correct appreciation of the part played by Paris in the Revolution, Jaurès has made a careful study of the economic development and the class conditions in "the capital of the bourgeois Revolution, the center of the great movement" (vol. i, p. 108). His scrutiny fails to reveal any appreciable solidarity of labor or antagonism to the bourgeoisie (vol. i, p. 136). In the rural districts, however, he finds a class conflict growing out of a clearly discernible clash of interests (vol. i, p. 220).

In accord with Champion, our author protests against Taine and all the ideologues who regard the Revolution as proceeding from abstract theories. "The alleged revolutionary declamation is a mere phrase: a world of sufferings and of abuses, and a world of institutions also, is contained and, as it were, heaped up in each of these *cahiers*" (vol. i, p. 155). It was not the extravagances of the theorists that precipitated the crisis. Necker was not a statesman and could not meet the financial situation; Mirabeau failed in his design of making the king chief of the revolution; the reorganization of the municipal system of Paris, though placing the bourgeoisie in power, multiplied points of contact between the government and a people inclined towards democracy; vehemence and continuity of action gave power to the most zealous;

the Republic was thus forced upon a people wholly unprepared for it, and the revolutionary disorder was precipitated.

Although conforming to the views of most students of the Revolution, Jaurès' treatment of the famous night of August 4 will be extremely illuminating to those who fondly suppose that this was the occasion of a voluntary surrender of privilege and sacrifice of property on grounds of abstract right. The *cahiers* had shown an almost universal demand for fundamental changes in seigniorial rights; the revolutionary ferment throughout the country made the situation dangerous; and it is evident that the Assembly was conscious of the danger. The speeches of Vicomte de Noailles and the Duc d'Aiguillon were evidently prepared in advance; they were based on a cool calculation of the situation; they were intended to save what could still be saved by the minimum of concessions. What the nobles surrendered had been already abolished by the peasant uprisings, and all the really important feudal privileges were abrogated only on condition of indemnity to the last penny and of their continuation until payment. This was a condition which the bourgeoisie could accept without endangering any of their landed rights. The importance of the August night must not be underestimated, however; for not only were the peasants shortly afterward freed from heavy burdens, but they ceased to live under the shadow of seigniorial power and began to develop a democratic spirit. The process by which the August decree was carried out is fully described.

In his long chapter on the formulation of the organic laws, Jaurès naturally shows greatest interest in the discussion of the democratic measures, though all the laws are treated in detail. Three reasons are assigned for the restricted suffrage adopted by the Constituent Assembly. The bourgeoisie, without having a distinct class fear, felt some uneasiness about admitting the mob to power; in the experience of Turgot in the Limousin they found some reason to suspect that the poor would lean toward the nobles and clergy; and finally, since the philosophers had prepared the revolution, there was little thought of associating the ignorant in the work.

On the basis of a detailed statistical study of the distribution of church property, the social results of the nationalization are enumerated. A large number of people were committed to the support of the Revolution by purchase of the confiscated property; the reverence for the clergy was diminished; the political power of the forces of the old régime was undermined by the removal of the economic basis; rural democracy was reinforced by the increase of independent landholders; conservatism was strengthened by the approximation of the interests of

the small holders with those of the upper classes ; and the productivity of the soil was increased.

To give color of equity to the immense expropriation, the Assembly had to assume the burden of supporting the church, and therefore it became involved in the fundamental problems of ecclesiastical organization. In view of the present ecclesiastical situation in France, Jaurès' views are interesting. He has little patience with the partisans who reproach the Assembly for not settling the church and state problem once for all by separation. At that time concrete forces did not exist to support such action ; by centuries of inheritance and training catholicism was woven into the very fibre of French popular life : it required the violent opposition of the clergy to the Revolution, their complicity with the enemies of liberty and the crimes of the Vendée to turn the people from the clergy and Christianity. Jaurès even defends the assumption of the ecclesiastical budget by the state, not as a debt created by the expropriation but as a historical necessity accompanying the nationalization (vol. i, p. 541).

On the subject of the war with Europe Jaurès is critical and illuminating. By a long analysis of documents he arrives at the conclusion that the conflict was largely the result of political machinations. He shows clearly that the declarations of the powers against France were neutralized by the situations in which they were placed at the time, and, what is more important, that the agitators who urged the war were conscious of the weakness of possible combinations of the powers. The king was a vacillating traitor, but the powers were hesitating or impotent. The Legislative Assembly, instead of carefully watching the king and conciliating the powers, did the opposite. Only in war could the revolutionary energy be excited and maintained, intrigues exposed, the king put to the test and forced to submit to the Revolution or be overthrown (vol. ii, pp. 796, 812, 815, 816). Jaurès also devotes considerable attention to the causes of the war between France and England. He maintains that this war could have been avoided if England had rendered French propaganda innocuous by domestic political reforms and if France had renounced revolutionary propaganda and had given England assurance that her interests on the continent and the treaties she had guaranteed would be respected. Here it seems that our author has partially forgotten his economic thesis and has fallen into the habit of those historians who imagine that history can be written from diplomatic notes and parliamentary speeches. For more than one hundred years France and England had been engaged in a determined struggle for colonial and commercial dominion, and the forces which impelled France to war in 1778 were not inactive in 1793.

While Jaurès' views of politics and war are interesting, they are perhaps less useful than his study of the social and political ideas of Europe in their relation to the Revolution (vol. iii, pp. 442-854). He finds several reasons why Germany was relatively impervious to the revolutionary propaganda. In Germany political divisions impeded collective action; there was no Paris; there was no rich bourgeois class striving for economic and political power; the intellectual classes were conciliated by the liberty offered at petty courts and the patronage bestowed by petty princes; the political intrigues of Prussia and Austria consumed a great deal of energy; and there was no general assembly to form a centre for national activity. There was a great deal of intellectual ferment in Germany and there was much interest in the revolution; but the Germans were mild and incoherent theorists. Wieland, the boldest and clearest of them all, contented himself with the practical program of education under princely patronage (vol. iii, p. 489). Pestalozzi had a true passion for the people, but he did not lift his voice against the arbitrary power of seignors and bailiffs or advocate a democratic organization of justice or popular administration of the commune (vol. iii, p. 500). Under its mystical forms the teaching of Lessing was fundamentally revolutionary; thrown violently into the world, his ideas would have revolutionized philosophical and political systems; but Lessing's principles had no immediate force because his grand doctrine was that all eternity was at his disposal. Kant extended scientific criticism to political institutions, but it was only from the governments themselves that he expected reforms. As for Goethe,

In the soul of Faust there is no trace of the great emotion for revolution and for humanity. When the old and weary scholar is about to drink the cup of death, he is held back for an instant by the pious and pure song of the simple souls: "Christ is arisen." The bells that chime in his ears ring the song of the past; none of them rings the song of the future, the universal revolutionary liberation of men (vol. iii, p. 532).

Jaurès devotes more than two hundred pages to a study of English conditions. His comparison of Smith and the physiocrats is striking and valuable. The doctrines of the latter were a disconcerting mixture of progressive and retrograde ideas; they were the theories of a people not yet sure of its destiny, a people which did not know how to reconcile with its traditional agricultural power the new forces of production and multiform capitalism which were rising and spreading within the social structure. On the other hand the principles of Smith responded to the conviction of a people ripe for the factory system and the commercial

mastery of the markets of the world. Smith fully recognized the importance of agriculture but he wished it to be an aid, not a hindrance, to industry (vol. iii, p. 659). After comparing the English and French land systems, Jaurès sums up in a remarkable page the contrast between the economic, social and political conditions in the two countries (vol. iii, pp. 726, 727). The policy of Pitt is carefully examined, and that great statesman is characterized as whig reformer, but enemy of democracy, and *par excellence* defender of capitalism and commerce. There are sections on the radicals in England, Paine, Mackintosh, Cowper, Wordsworth and Robert Burns, and a critical appreciation of the controversy which raged around Burke's *Reflections*. Jaurès defends France against Burke's charge of being the victim of chimerical abstractions. He maintains that French history is also founded on realities; but, having no institutional traditions to fall back on, the French used natural rights as a justification for revolutionary notions. Jaurès does not mention what is now established beyond a question, that the traditional liberal interpretation of Magna Carta as a democratic document is utterly unfounded, and that the famous charter of liberties was really a reactionary feudal measure designed to bolster up the interests of the nobility.¹ Jaurès wonders at Burke's paucity of information concerning the real state of France (vol. iii, p. 736) and also at his use of wholly *ex parte* statements.

The fourth volume opens with the trial of the king and closes with the 9th Thermidor. In addition to the full discussion of political events there is a long and valuable chapter on the social theories of the Convention and the revolutionary government. No time is spent in discussing the legality of the action of the Convention in executing the king. France was in a revolutionary state; the suspension of the king and his incarceration were revolutionary acts; the Convention was a revolutionary body, since it was not summoned according to the provisions of the constitution of 1791. The foreign policy and the military organization, the development of factions and their contests from the death of the king to the fall of the Gironde are discussed in some five hundred pages. Jaurès does not seek to explain the complexity of domestic intrigues during the Terror on grounds of class antagonism. Between the social theories of the Gironde and the Mountain he finds no profound divergence; the pretensions of the former as defender of property are attributable to political tactics (vol. iv, p. 1448). It is true that one

¹ See Edward Jenks, in *The Independent Review*, November, 1904, and the qualified views of McKechnie, *Magna Carta*, 1905.

party was supported by bourgeois interests and the other by the people ; but if the Girondists had believed that they could have maintained their supremacy by consenting to the forced and progressive loan and to the *maximum*, they would not have hesitated, as they had no inflexible economic principles. A study of the social theories of Robespierre demonstrates that the prince of revolutionists advocated nothing that was fundamentally opposed to the bourgeois property concept (vol. iv, p. 1565). Robespierre saw that he needed the political support of the proletariat against the Girondists, whose traitorous inertia would have lost the Revolution. He saw in process of formation discontented parties which demanded for the people not only political rights but also certainty of livelihood, and he sought a modification of his theory of property which would attract the support of those who voiced this demand, but he never dreamed of its future developments (vol. iv, p. 1568). Jaurès believes that the law against monopoly was useful at a time when France was practically in a state of siege and that the extensive commercial publicity and the forced circulation of paper money may have prevented disaster,¹ although these measures could not remedy the price-crisis, owing to the scarcity of grain and the decline in the value of the assignats. Like the tension of the Terror and the dictatorship of the Committee of Public Safety, these economic measures were abnormal ; they were incompatible with a society founded on individual property and private production ; the strong pressure of economic forces prevented an indefinite extension of the disorganization which weakened public credit and rendered commerce and industry precarious. The revolutionary measures, in other words, had no economic foundation, and France was destined to establish a political system that could give free play to the economic forces released from feudalism, namely, an orderly bourgeois state.

M. Deville takes up the story after the fall of Robespierre and writes the history of the reaction and the Directory. There is little in this period that lends itself to economic treatment. Before the 9th Thermidor the leaders of the Revolution had transformed social relations and adapted them to the economic necessities of their epoch, and a republic transcending the needs of the bourgeoisie—a republic of all the people—was bound to disappear. M. Deville therefore has political and military events to relate, but he also writes sections on Babeuf, finan-

¹ Vol. iv, p. 1783: "La loi du maximum, en même temps qu' elle restituait le crédit des assignats et servait par là merveilleusement le gouvernement révolutionnaire, l' État acheteur, a prévenu les paniques et empêché l' extrême tension des rapports économiques d'aboutir là et là à des violentes ruptures d' équilibre."

cial legislation, science, commerce and industry. The master idea of French diplomacy was the contest with England—a conflict inevitable so long as France was under the "disastrous influence of the false principle of natural frontiers" (vol. v, p. 380). England never could consent to the annexation of Belgium; and the English commercial power could be broken only by a continental system carried out not by aggrandizement but by arrangements profitable to all parties concerned. This conflict with England is the key to the military situation. Domestic politics consisted of contests between ambitious factions which could not maintain order, and the coup d' état of 1799 was consummated "to the great joy of the speculators" (vol. v, p. 592).

Such are the leading ideas of the new history of the Revolution so far as they can be reproduced within the limits of a review. The work, in spite of its ominous title and flaming red covers, is not a violent party polemic, but a monumental contribution to the literature dealing with the Revolution. Its interest lies not so much in its originality as in its acceptance of the views of the most recent scholars on the main points. We do not have to accept socialism in order to accept many of the conclusions of MM. Jaurès and Deville; indeed Professor Seligman has demonstrated that socialism and the economic interpretation of history are entirely different propositions. The story is remarkably impartial; and, indeed, there is no reason why an intelligent socialist should not be as impartial as a tory or whig. One who dissents from the views of both tory and liberal may write as scientifically as one who maintains either side. The most scholarly and definitive essay on the canon law in England is by a man who dissents from all churches.

However, the serious student has reason to find fault with Jaurès' arrangement of his material and his use of documents. There are chapters from four to six hundred pages long without any break in the text to indicate transitions. There is no index, and the tables of contents are so meagre as to be almost useless. Printed and manuscript materials are extensively used; long and valuable quotations are made from rare and curious works; but there are no references to the volumes, editions or pages except in Deville's part. There is no way of telling how thoroughly evidence has been sifted or of verifying statements. There are many misprints and mistakes in dates. If Jaurès would recast his material, document it thoroughly, treat related topics consecutively, break the chapters up into sections and provide a useful table of contents, scholars would find the value of the work greatly increased.

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REVIEWS

France in America, 1497-1763. By REUBEN GOLD THWAITES (*American Nation*, Volume VII). New York, Harper & Brothers, 1905.—xxi, 320 pp.

The American Revolution, 1776-1783. By CLAUDE HALSTEAD VAN TYNE (*American Nation*, Volume IX). New York, Harper & Brothers, 1905.—xix, 369 pp.

The Confederation and the Constitution, 1783-1789. By ANDREW CUNNINGHAM McLAUGHLIN (*American Nation*, Volume X). New York, Harper & Brothers, 1905.—xix, 348 pp.

The Formation and Development of the Constitution. By THOMAS FRANCIS MORAN (*History of North America*, Volume IX). Philadelphia, George Barrie & Sons, 1905.—xix, 504 pp.

One advantage of the present fad for serial histories is that it makes necessary the study of certain periods and phases which have hitherto been neglected or else treated in detail without much regard to the general historical perspective. Professor McLaughlin, for example, has taken advantage of his opportunity to produce a sane, scholarly, well-written work, which, if not as interesting as Fiske's *Critical Period*, is of far more value to the student. Professor Van Tyne throws very little new light on the military history of the Revolution, but his special study of loyalism has enabled him to emphasize the civil war aspect of the struggle. The volumes by Mr. Thwaites and Professor Moran are disappointing. It is evident that they had too much other work on hand or were hurried by inconsiderate publishers. Both are careless in style, in statement of facts and in arrangement of material.

Mr. Thwaites has undoubtedly tried to cover too much ground in one small volume, but it is a question whether he has made the best use of the space allotted to him. The treatment of the northwest is good, and its value is enhanced by several useful maps. That of Canada and Acadia leaves an impression that something is lacking, while that of the lower Mississippi and Gulf regions is decidedly inadequate. He uses Hamilton's *Colonial Mobile*, but makes no reference to his *Colonization of the South*, either in the footnotes or in the bibliographical

chapter. Possibly the book did not appear in time. We might reasonably have expected from Mr. Thwaites a special chapter on French ecclesiastical policy, a sympathetic treatment of the Jesuits which would serve as an antidote to Parkman, but the subject is almost entirely neglected. Admirers of Parkman know that the field is unusually rich in material for emphasizing the personal equation, yet Champlain and Bienville are mere automatons and Frontenac is mentioned only once. However, such omissions are possibly unavoidable in a book of three hundred pages, only one-third of which is devoted to the period before 1743. The latter part is better written and Wolfe and Montcalm receive rather more consideration. In view of the increasing popularity of Captain Mahan's ideas of sea power, it is interesting to note that Mr. Thwaites gives as much credit to Warren at Louisburg and to Saunders at Quebec as he does to Pepperrell and Wolfe. Several mistakes may be noted—for the most part evidently the result of haste and carelessness. To refer to the court of Versailles in the days of Henry IV is anachronistic, to say the least (p. 15). The griffins were not on La Salle's coat of arms, but on that of Frontenac (p. 61). The government of France did not come under the "practical control of the benign Cardinal Fleury" immediately after the death of Louis XIV (p. 89). The War of the Austrian Succession did not begin in 1744, and Spain, France, Bavaria, Saxony and Prussia did not contend "for a division of the empire," but for a division of the Hapsburg dominions (p. 105), which is quite a different matter. The prime minister in 1746 was not the Duke of Newcastle, but his brother Henry Pelham (p. 119).

In point of style Professor Van Tyne's book is easily the best of the four, while in accuracy of details and in arrangement of material it is superior to those of Mr. Thwaites and Professor Moran. Professor Van Tyne's account of military affairs is vigorous and dramatic. Although he regards Washington's generalship in the battle of Long Island as "unwise and unskilful" (pp. 107-108), he evidently does not agree with Mr. Charles Francis Adams that his escape was purely a matter of luck or that the attempt to hold New York was a mistake *ab initio* (*Amer. Hist. Review*, vol. i, p. 650). In the light of Professor Johnston's researches the reviewer was curious to note where Professor Van Tyne would locate the battle of Harlem Heights and was surprised to find that he ignored it entirely. At the time implied in the text, September, 1776, the American troops were not "strongly intrenched beyond the Haerlem" (p. 118), but were still on Manhattan island. A few other minor mistakes have been noticed. The House of Commons in 1765

contained representatives not merely from "certain ancient counties," but from all the counties of England (p. 12). New Englanders would hardly agree that the extension of the province of Quebec to the Ohio river affected the territorial integrity of Virginia alone (p. 23). In stating that "Massachusetts could afford to be extreme and revolutionary because her charter was gone, but Pennsylvania and Maryland and the southern colonies had something to lose, and naturally held back" (p. 76) can Professor Van Tyne mean to imply that the colonies south of Maryland had charters in 1776? Is it true that the British ministry never seriously entertained the idea of sending a bishop to America (p. 112)? The author is at times careless in his references, as when he quotes Greene's *Colonial Commonwealth for Provincial America* (p. 7), Morley's *Burke*, without indicating whether he means the volume in the English Men of Letters series or the earlier study (p. 17), and McCrady's *South Carolina in the Revolution*, without mentioning the volume (pp. 293, 295). The critical essay on authorities is one of the most exhaustive that has yet appeared in the series. Cobbett's *Parliamentary History*, however, should be mentioned in any list of sources bearing upon the work of Parliament during the Revolution (p. 336). Ford's edition of John Dickinson's writings is of course incomplete, only one volume having appeared instead of three (p. 337).

In his chapter on "State Sovereignty and Confederation," Professor Van Tyne argues that the nation was not created by *fiat*, but that in the course of nature it "slowly evolved from the mere protoplasm of the revolutionary time" (p. 176). No one in 1776 imagined that a sovereign nation had come into existence. Patrick Henry's rhetorical declaration in the first Continental Congress that "all America is thrown into one mass" was merely the utterance of a demagogue, and it was belied by his whole subsequent career. Local selfishness, the desire to advance the interests of Virginia at the expense of the small states, was the motive which impelled him to make the speech.

South Carolina, in two constitutions adopted during the war, provided her government with those peculiar features of sovereignty, the right of making war and entering into treaties. Virginia ratified the treaty with France, and she, as well as other states, sent her own agents to Europe to contract a loan and get arms and ships [p. 179].

This may be contrasted with the following from Professor Moran's book :

. . . as a matter of fact, the states were never sovereign in the true sense

of that term. . . . There was a union before the colonies became free and independent states. The union, then, was older than the states, and the idea that the states were ceding something from their absolute sovereignty to make a union was an entirely mistaken conception. No American state had ever figured before the world as a sovereign power [pp. 13-14].

And yet in another connection Professor Moran says: "The people accepted the idea of an indissoluble union in 1865, but they would not have done so in 1787" (p. 126). In emphasizing the old Webster-Story argument based on the preamble of the constitution Professor Moran fails to call attention to the fact that in its original form, adopted unanimously by the convention, the preamble mentioned every state by name, and that it was changed by the committee on style probably for the very good reason that some of the states might refuse to ratify. According to Professor Van Tyne the development of the philosophical theory of national sovereignty was simply the result of the later sectional controversy (p. 177).

If some of the volumes in the first two groups of the Hart series fall below what the editor had led us to expect, Professor McLaughlin's book goes far towards tempering our disappointment. It requires courage to devote eleven chapters (183 pp.) to the period between 1781 and 1787 and only seven (133 pp.) to the construction and ratification of the constitution. The excellent treatment of commercial and financial conditions, diplomatic relations, paper money, and Shay's rebellion, however, would alone justify this apportionment, not to mention the three admirable chapters entitled, "The Problem of Imperial Organization," "Founding a Colonial System" and "Founding of New Commonwealths." Jefferson's share in originating the anti-slavery clause of the Northwest Ordinance might be emphasized more fully. His ordinance of 1784, to be sure, applied to the whole of the western country and the slavery restriction clause in the original draft was not to go into force until after the year 1800, but it contained the principle of exclusion which was worked out subsequently by Pickering, King and Dane. Professor McLaughlin believes that the Pinckney plan, which Moran, by the way, ignores entirely, "had considerable influence in determining the contents of the constitution" (pp. 194-195). Curiously enough, neither he nor Professor Farrand seem to have noticed Pinckney's contribution to the so-called three-fifths compromise. The two ideas in the compromise are of course taxation and representation. The application of the three-fifths rule to taxation was first suggested in an amendment to the Articles of Confederation

proposed in 1783. On May 21, 1787, four days before the convention was organized, George Read of Delaware wrote to Dickinson stating that he had seen the draft of a plan for a federal system. There was to be a legislature of two houses, in one of which, the house of delegates, the membership was to be proportional to the number of white inhabitants and three-fifths of all others. (*Annual Report of the Amer. Hist. Assoc.*, 1902, vol. i, pp. 119-120). Professor Jameson's belief that this letter referred to the Pinckney plan was verified by the subsequent discovery of an outline of the plan itself among the James Wilson papers in the library of the Historical Society of Pennsylvania, published in the *American Historical Review* for July, 1904. Professor McLaughlin also fails to call attention to the fact that on June 11 the convention in committee of the whole adopted by a vote of nine states to two a motion introduced by Wilson and seconded by Pinckney providing for the three-fifths basis of representation (*Madison Papers*, Hunt Edition, vol. iii, pp. 143-144). All that remained to be done in open convention was to associate the ideas of taxation and representation and to limit the rule to direct taxes. In its final form it was a compromise, but to call it one of the "three great compromises" is an absurdity which Professor McLaughlin prudently avoids.

Professor Moran's volume covers the period from the close of the Revolution to the beginning of Madison's administration (1781-1809). His work is very uneven. The treatment of the years between 1781 and 1787 is especially weak, while the discussion of the convention is interesting and suggestive. Chapter viii on "The Origins of the Constitution" is perhaps the best in the book. The author lays especial emphasis on the undoubted fact that the idea of the presidential electoral college was derived from the Maryland method of electing state senators (pp. 221-222). It is unfortunate that an otherwise excellent work should be so marred by defects of style and by carelessness in matters of detail. Franklin, of course, did not introduce the unicameral system into the Pennsylvania constitution (pp. 4-5). It was based on the old colonial government. Pennsylvania did not provide in 1780 "that the children of slaves born in the future should be free" (p. 44), but that they should eventually be free. New York was not the only state at the close of the Revolution in which free negroes exercised the right of franchise (p. 44). Massachusetts, New Hampshire, New Jersey, Pennsylvania and North Carolina might be added to the list. The statement (p. 145) that "it was decided that the executive should be chosen by the national legislature to serve for a term of seven years" scarcely warrants the conclusion that "the Convention

thus seemed emphatic in its favor of election by the state legislatures, until the electoral plan came up for serious consideration." Congress did not grant authority to the president in 1789 to remove heads of executive departments (p. 240). It recognized the authority as already existing, as constitutional in character. The reviewer questions whether Frederick the Great was "one of the best friends in Europe of the American cause" (p. 11) and he doubts that France ever insisted upon the enforcement of the rule of 1756 (p. 276). John Adams was vice-president for eight years instead of four (p. 308). If the Republicans imported William Cobbett (p. 341) it was a very magnanimous act inasmuch as he showed exceptional zeal in supporting the Federalists. The Alien Act could not affect William Duane because he was born in New York (p. 341). France ceded Louisiana to Spain in 1762, not 1763 (p. 399). More serious blunders are the reference to "the usurpations of Napoleon Bonaparte" in 1793 (p. 277) and the failure to grasp the significance of the case of *Marbury v. Madison*. Chief Justice Marshall certainly did not decline "to take jurisdiction on the ground that the judiciary could not interfere to control the executive" (p. 390).

W. ROY SMITH.

BRYN MAWR COLLEGE.

Provincial America, 1690-1740. By EVARTS BOUTELL GREENE (*American Nation*, Volume VI). New York, Harper & Brothers, 1905.—xvii, 356 pp.

Preliminaries of the Revolution. By GEORGE ELLIOT HOWARD (*American Nation*, Volume VIII). New York, Harper & Brothers, 1905.—xv, 359 pp.

The period covered by Greene's volume has never been adequately studied as a whole, and the monographic literature is most incomplete and only in very small part reliable. This is recognized, though not fully, by the author himself, for he says, in the preface, that "it is hardly possible even now to write a history which can be called in any sense definitive; certainly, no such claim is made for the present work." That the seventeenth century has been carefully, though not completely, studied, while the first half of the eighteenth century has been neglected, is partly due to the fascination exercised by the study of origins even on those who do not believe, with Fustel de Coulanges, that this is the main purpose of history. In part this neglect is also explained by the fact that the bulk of the material for the study of this period is in manuscript, and has in large part remained undisturbed

since it was filed away in the English archives. Greene says that much of this has been printed, but while that portion is undeniably bulky, yet it bears a small proportion to the whole. The mass of manuscript material available and easily accessible in England is enormous, and until this material has been carefully worked over, and the result of this work embodied in detailed monographs, it is impossible to write anything but a fragmentary and tentative account of the period. Under existing conditions this was bound to be the result of an attempt, such as Greene's, based wholly on the published records and on the inadequate monographic literature.

The reliance on incomplete material has led to vague and tentative statements where precise information is available. Thus, for instance, Greene says (p. 287) that there are no accurate statistics as to the trade of the continental colonies, and as a result he uses only partial statistics confined to a few years and arrives at misleading conclusions. Yet despite the burning of the bulk of the English customs-papers, very full statistics are available, not only in manuscript form, but in print. Sir Charles Whitworth's *State of the Trade of England* (London, 1776) gives accounts of the imports and exports between England and the colonies year by year from 1697 on. Similarly Greene says (p. 290) that it is extremely difficult to estimate even approximately the intercolonial coasting trade. This is unquestionably true, but it is not for want of material, as is seemingly implied. Abundant material is available in various forms, but especially in the naval office lists, whose only drawback is their great wealth of detail. Then a tentative statement is made about the condition of the colonial iron industry in 1750, whereas exact data are available in the governors' certificates. The account of the rise of the colonial treasurer (pp. 76, 77) is incomplete, since it fails to show how in several of the colonies, but especially in Virginia, a dual financial system existed, one controlled directly by the crown, the other by the colony. The statistics of slavery (p. 238) are misleading, since no attempt is made to differentiate between the continental colonies and those in the West Indies, and the estimate of the slave population is not in accordance with the available evidence. Similarly the entire description of the Board of Trade, both in regard to its efficiency and its advisers (pp. 169-172), is vague and indefinite where exact and precise statements are possible, as the records of its activity are most complete. In fact the entire account of the British administrative system and of imperial policy is incomplete and hence misleading, partly because the system has not been studied as a working institution in its records, and partly because no attention is paid to

any but the colonies that were to form the United States. Thus the account of the movement towards greater imperial control from 1660 on would become clearer and its success could be better estimated if its results in the Bermudas, in Barbados, in the Leeward Islands and in Jamaica were studied. There is for the same reason a failure to appreciate the spirit of English policy. Thus Greene does not recognize that there was an imperial interest which might conflict with the immediate interests of England or Scotland, or of any of the colonies, and that British colonial policy on the whole was based on this imperial interest, and not on that of Great Britain or of any colony or any group of colonies. It was in pursuance of this imperial policy that the molasses act was passed, not to benefit one group of colonies at the expense of another, but to strengthen the British Empire in its long-drawn-out duel with France. Oglethorpe's attitude in the controversy leading up to the passage of this measure (p. 252) is not quite correctly represented.

Despite the claim of this series, that it is a history written from the original sources, its main purpose seems to be to summarize the already acquired knowledge, not to add to it. The faults of this volume arise in the main from the existing defective state of that knowledge, and are not attributable to the author's methods in using the published records and the monographic literature. Greene has in general refrained from making sweeping generalizations founded on incomplete facts, and he is usually moderate in his judgments. Yet he has adopted the "American viewpoint," and there is a tendency, though not a marked one, to magnify the failings of the mother-country and to minimize those of the colonies. This is especially patent in the discussion of the old colonial system, where no account is given of the imperial fiscal system by which many colonial products were given preferential treatment in the British market. Then, from the reasons assigned for disallowing colonial laws in England (pp. 52, 53), no one would infer that a large number of the colonial laws disallowed were laws aimed directly at the interests of other colonies, inequitable debtor laws, laws depreciating the standard of value and thus scaling down debts, and laws discriminating against other fellow-subjects residing in Great Britain or in another colony. The general statement (p. 173) about the character of the royal governors does them scant justice. On the other hand one of the chief evils of the British administrative system which retained its vitality in spite of the opposition of the Board of Trade—the residence of minor officials in England and the delegation of their duties, in return for part of the profits of their offices, to deputies resident in the colonies—is not mentioned.

Naturally some errors, in part due to carelessness, appear in a work covering so long a period. Such an error is the statement (p. 36) that ship-timber was an enumerated commodity. Then the statement regarding the effect of the French military operations against Newfoundland in 1696 (pp. 127, 133) is inaccurate in so far as it implies that the New England fisheries were in Newfoundland. With the exception of the whale fishery, they were virtually confined, during the entire period under review, to the coasts of Nova Scotia and New England. The statement regarding the status of Scotsmen and Irishmen (p. 4) in the colonies should be modified.

Howard's volume is devoted primarily to events between the years 1763 and 1775, and to a discussion of the causes of the American Revolution. He recognizes that the causes of the revolution were remote, antedating 1763, and he also recognizes that unconsciously the colonists were for a long time preparing for independence. Its causes, he says, were not social, but political and economic. The primary cause he finds in the old colonial system, as embodied in the laws of trade and navigation. This system, he says, "was wrong in principle and degrading in motive," and hence necessarily the cause of the Revolution (p. 65). It may be admitted, purely for the sake of argument, that this indictment of the old colonial system is justified by the standards of the twentieth century, but in order to prove his thesis Howard must show that it was the view of the eighteenth century prior to the revolutionary era. Granting that the system bore hard on the colonies, it was only a recognition of this fact that would produce political results. Of such a recognition there is no sign. A careful search of the records shows that there was no objection on the part of the colonies to the system as a whole, though there were complaints against isolated features, which were then carefully considered and usually changed by Parliament. On the other hand Francis Yonge, one of the leaders in the South Carolina revolution of 1719, while agent for that colony, suggested to the Board of Trade a much more restrictive system than that in force (Board of Trade, South Carolina 1, A. 36), and Bollan, as late as 1755, while agent of Massachusetts, wrote for the Board of Trade a detailed dissertation on the legal defects in the laws of trade and navigation in order that they might be remedied and the law better enforced (Board of Trade, Massachusetts 74, Hh. 52). Burke's conclusion, in his speech on American Taxation, that the general attitude of the colonies before 1764 was one of acquiescence, is supported by the available evidence.

The comparatively detailed account of the old colonial system is not

accurate. It did not give English manufacturers a monopoly of the colonial market, as Howard maintains (p. 51), nor is it correct to describe it as "class legislation pure and simple" for the benefit of the English merchant and manufacturer. The importance of the English preferential system by which colonial products were encouraged by direct and indirect bounties is overlooked. Certainly the farmers in England whose tobacco was destroyed by the military forces during the reign of Charles II, did not look upon the colonial system as class legislation in favor of England, nor was it so regarded by the English tax-payers, who at one time paid in bounties on colonial naval stores a sum not much less than that which the stamp act was expected to produce in the continental colonies. In view of Howard's thesis that the old colonial system, as it existed before the revolutionary era, was the primary cause of the Revolution, it is surprising that no account is given of the fundamental changes in that system made by numerous statutes from 1764 on. This subject, which has never been adequately investigated, deserves treatment at Howard's hands not only in view of his thesis, but also for the reason that the system described in his book did not prevail during the period therein treated.

In order to understand the change in English policy after 1763 and also the changed attitude of the colonies towards the mother-country, some account of the policy of imperial defence and its integral relation to the old colonial system is necessary. The peace of 1763, by removing the French danger, removed the chief utilitarian bond attaching the continental colonies to the mother-country. At the same time the vast area of the territory yielded and the increased importance of Indian relations necessitated a great increase in the expenses of administration. It must also be noted that it is impossible to understand English policy unless some account is given of the trade of the colonies with the enemy during the war. This subject also has never been investigated, although there is a large mass of papers in the English records bearing on it. This trade not only seriously hampered British naval operations in the West Indies, but also raised the price of provisions on the continent to such a degree that Amherst had difficulty in provisioning his army and had even to import from Europe for this purpose. One of the means adopted for stopping this illegal trade was the enforcement during the war of the Molasses Act of 1733; and this enforcement directly led to the difficulties in Massachusetts about the "writs of assistance." This trade in turn led directly to the orders for the stricter enforcement of the laws of trade, and to the changes in policy inaugurated by the law of 1764. Again, some account should be given of the

grudging support afforded by the colonies as a whole during the Seven Years' War and the subsequent Indian conspiracy. It was this that led to the proposals of Dinwiddie, Shirley, Braddock and others for taxing the colonies in 1755. These subjects are either ignored or inadequately treated by Howard. Further, the activity of the English government after 1763 in its efforts to secure greater imperial control is not studied in all its manifestations. As it was this activity, at a time when the colonies least needed the mother-country's protection, that led directly to the ultimate separation, these omissions are important. The policy towards the Indians and the efforts to regulate the Indian trade should be, but are not discussed. Then something should be said of the attempts to collect the Greenwich Hospital dues in America. This was unquestionably a source of friction. Thus in 1763 the principal deputy-receiver of these dues in America wrote to England, "great clamours have arisen against me for the measures I am taking for a more exact Collection of the Duty" (*Admiralty Papers, Greenwich Hospital, Misc. Various, 131.*)

Howard belongs to that group of writers who fail to recognize that the desire of a community for complete self-government may be independent of the question whether or not the outside control is for the benefit of the dependent community. He does not realize that the mother-country and the colonies were each, from the respective standpoint adopted, pursuing legitimate ends, and that the Revolution was due as much to a misunderstanding of English aims by the colonists as to English misunderstanding of colonial conditions. Hence his attitude is strongly partisan, and he uncritically adopts American statements and ignores or belittles those from English sources. This leads to a distinctly distorted account of English policy. Thus he discusses in detail the objections of the clergy to the Virginia "twopenny act" of 1758, and entirely fails to realize that the most fundamental imperial relations were involved in this act. No mention is made of the fact that this law directly affected English merchants trading to Virginia by making their outstanding contracts in the colony null and void, and that it was their complaints as much as those of the clergy which led to the disallowance of the law in England. (*Board of Trade, Virginia 26, X 67.*) It certainly misrepresents Great Britain's attitude to say, in connection with this disallowance, that "a royal prerogative which absolutely denied to the colonists the privilege of self-help through legislation even of temporary force was fast becoming intolerable." Then it is certainly not justifiable to contrast the morals of the Medmenham Abbey set in England with those of John Adams, as if either were typical of

the respective communities. In his treatment of the slave-trade Howard also shows a strong bias. In view of Great Britain's attitude toward slavery in Georgia, where the colonists forced the mother-country to sanction the institution, the general statement that attempts to restrain slavery were frowned upon in Great Britain should be modified; and there is no justification for the statement regarding the Virginians (p. 90) that "they objected to the exercise of the prerogative, not primarily because the king was forcing upon them a traffic which they abhorred, but because they believed their welfare was being sacrificed in the interest of British merchants." The attitude of England and of the colonies towards slavery is not correctly represented, though there is abundant material from which the truth can be ascertained. The governors were instructed not to agree to laws imposing duties on negroes imported, unless these duties were made payable by the purchasers and not by the importers. The instruction arose from a complaint of the English slave-traders that on account of duties made payable by the importer an excessive amount of capital was required in the trade. Some colonial laws were repealed in England because they violated this instruction, and others because the duty was so high that the English government feared it would raise the cost of production in the colonies and ultimately hurt them in competition with the foreign colonies. Yet in general, with but slight interruptions, all the plantation colonies on the continent levied duties on the importation of negroes with the full knowledge and consent of the mother-country. These duties were levied primarily for revenue purposes, and also partly because the great increase in the slave population, it was feared, portended a slave insurrection like the rather formidable and protracted one in Jamaica. There was, however, another reason for the enactment of such laws—namely, to protect the colonial industry of breeding slaves. In 1760 the Virginia assembly reduced the import duty on slaves; the burgesses passed the law by only one vote. The contest on this occasion, as Fauquier informed the Board of Trade, was

between the old Settlers who have bred great Quantity of Slaves and w^t make a Monopoly of them by a Duty w^t they hoped would amount to a prohibition; and the rising Generation who want Slaves, and don't care to pay the Monopolists for them at the price they have lately been w^t was exceedingly high [Board of Trade, Virginia 27, V 8.]

The Virginia law of 1760 distinctly says that the duties were reduced because they were found

very burthensome to the fair purchaser, a great disadvantage to the settle-

ment and improvement of the lands in this colony, introductory of many frauds, and not to answer the end thereby intended, inasmuch as the same prevents the importation of slaves, and thereby lessens the fund arising from the duties upon slaves [Hening, vii, 357, chapter i, 1760.]

The following year Virginia still further reduced these duties (Hening vii, 383, chapter i, 1761). In spite of these facts Howard says (p. 89) that "in 1761 several acts of the Virginia legislature, raising the duty on imported slaves, were vetoed by the crown;" and it is in connection with these imaginary disallowances that he makes the above-quoted unjustifiable remarks about Virginia's objection to the royal prerogatives, Virginia's abhorrence for the slave-trade and the sacrifice of Virginia's interests to those of British merchants. It is hardly possible to conceive of a more complete misrepresentation of the facts.

The work of Howard is of an entirely different character from that of Greene. Whereas the latter relies to a great extent on the published records, this work is mainly based on the monographic literature and on general treatises, such as those of Bancroft, Lecky and Trevelyan. To a marked degree it is composed of duly acknowledged excerpts from such works, and hence the conclusions arrived at are not very convincing. There are also marked signs of haste, and consequently a number of careless statements. Thus Howard says "already, in 1730, Montesquieu had prophesied that because of the laws of navigation and trade England would be the first nation abandoned by her colonies" (p. 18). This tends to support Howard's thesis as to the effect of the old colonial system, and is surprising in view of Montesquieu's approval of the principles of that system (*cf. Jaubert, Montesquieu Économiste*, p. 95). What Montesquieu actually said is an entirely different thing. In one of his detached remarks in his *Notes sur l' Angleterre* (ed. 1827, vol. vi, p. 339) he says: "Je ne sais pas ce qui arrivera de tant d' habitans que l'on envoie d' Europe et d' Afrique dans les Indes occidentales; mais je crois que si quelque nation est abandonnée de ses colonies cela commencera par la nation anglaise." Then a letter is quoted (p. 31) as written by George Grenville to show the writer's "naïve and unblushing methods of corruption." It would be an important reversal of general opinion to show this, for Burke's estimate, that Grenville was a public-spirited, hard-working statesman whose ambition was "to raise himself, not by the low pimping politicks of a court, but to win his way to power through the laborious gradations of publick service" (Speech on American Taxation) is accepted even by Bancroft, who calls him "a model of integrity" (ten volume edition, vol. v, p. 99), and by all other students of the period. The letter

quoted turns out to be written by Henry Fox (Walpole, *Memoirs of George III*, vol. i, p. 169). On page 23 Howard tells us that the Irish linen industry was discouraged by England. As a matter of fact Great Britain encouraged the industry by a system of bounties under which the quantity of Irish linens exported from Great Britain entitled to such bounties increased from 40,907 yards in 1743 to 2,588,564 yards in 1763, and the total number of yards exported from Ireland increased in the same years from 6,058,041 to 16,013,105 (Murray, *Commercial Relations of England and Ireland*, pp. 128-130). Then although Howard mentions Bancroft's disregard of the ethics of quotation marks, he quotes from him an extract of a despatch from Shirley without looking up the original, which is in the America and West Indies series, bundle 82. Unfortunately Bancroft's extract omits some significant words, and besides it is given without the context, with the result that Shirley is misrepresented. "Removed" for "renewed" on page 135, first line, is obviously a misprint. The statement (p. 41) as to the number of slaves imported into the continental colonies, 1733 to 1766, is very inaccurate, and in addition no appreciation is shown of the fact that the slave trade to the West Indian colonies was far larger than to those on the continent. The statement that up to 1761 "the provincial judiciary had in fact enjoyed the same security of tenure" as in England (p. 85) is diametrically opposed to the facts. The colonial judges in general were dependent on the crown, and also on the assemblies for their salaries, and there were instances of undue influence from both sides.

Though there is a distinct difference in the quality of these two books, they both emphasize the necessity of a broader and more catholic view in treating the colonial period of American history. Even more than this do they emphasize the necessity of a thorough study of the manuscript records in England. The neglect of these indispensable sources by American scholars is in part due to their location, though this difficulty is by no means an insuperable one. It is, however, a disadvantage which is now gradually being overcome by such publications as the Georgia records, but which can be completely removed only when an exact copy of this huge mass of material is lodged in Washington. Of this work, fortunately, a beginning has been made, but the task is of such magnitude and importance that it requires and deserves the support of the national government.

GEORGE LOUIS BEER.

NEW YORK CITY.

Colonial Administration. By PAUL S. REINSCH, Professor of Political Science in the University of Wisconsin. New York, The Macmillan Company, 1905.—viii, 422 pp.

Territories and Dependencies of the United States, Their Government and Administration. By WILLIAM FRANKLIN WILLOUGHBY, Treasurer of Porto Rico. New York, The Century Company, 1905.—xi, 334 pp.

Dr. Reinsch's book is a companion volume to his work on *Colonial Government* published in 1902 as a part of "The Citizen's Library." The title *Colonial Administration* which he has given to the present volume is somewhat misleading, for the book is devoted to colonial policy. It has hardly a word to say as to governmental or administrative institutions, which were treated with a considerable degree of fulness in the former work. The present volume is devoted to a consideration, largely from the view-point of the dependency, of the policy which should be followed by the mother country towards its colonial possessions. There are thus chapters devoted to education, finance, currency and banking, commerce, communication, agricultural and industrial development, land policy, the labor question and defence and police.

The treatment of these special questions is preceded by an admirable introductory chapter, a part of which was read before the International Congress of Arts and Sciences at St. Louis in 1904. In this chapter are to be found the author's conclusions as to the general policy which colonizing nations should follow relative to their colonial possessions. These conclusions, it may be added, are predicated, as indeed is the whole book, upon the hypothesis that the colonial possessions under consideration are to be found in tropical regions, or at any rate in regions which are of such a character as not to invite a large emigration to them from the mother country. In other words, Dr. Reinsch's book is not so much a discussion of the administration of colonies in general as an attempt to contribute to the solution of the questions which present themselves to colonizing nations at the present day. Since almost all the occupation or settlement colonies either have become independent of the mother country or have been endowed with practical autonomy, these problems are to be found only in connection with colonies occupied by an alien race and one which, by reason of its backwardness in development, has been subjected to a régime of political dependence.

The main idea which Dr. Reinsch endeavors to emphasize is one which is often lost sight of, particularly by those who regard with seriousness the white man's burden. This idea is that it is not only hopeless but cruel to attempt to impose our civilization and our ethical notions upon peoples whose economic, social and industrial conditions are largely different from our own. Dr. Reinsch points out that, if we truly believe, as most of us do, that our civilization is higher than is that of those whom fortune, duty or destiny has made our wards, and if, because of a belief in the brotherhood of man, we take our duties towards our less fortunate brothers seriously, we should do what in us lies to better their economic condition and, on the foundation thus laid, attempt the erection of the superstructure of a higher and a better civilization.

What Dr. Reinsch shows us, perhaps more clearly than anything else, is that we should not attempt to endow a people whose economic conditions are primitive with an administrative and governmental system suited only for conditions of comparative economic complexity and supportable only by a country whose economic resources are more ample than those usually found among tropical peoples not as yet blessed with a European government. It of course follows from what has been said—and this is a point which Dr. Reinsch does not neglect—that nothing can be more reprehensible, from the point of view of the interests of both the mother country and the dependency, than for the mother country deliberately to adopt towards the dependency a policy which is actuated merely by the desire to secure economic advantage from the relationship without regard to its effects upon the dependency.

The conclusions set forth in the introduction are reinforced in the subsequent chapters on special subjects. In these the various methods adopted by the colonizing nations of the present day are set forth with great detail.

While Dr. Reinsch's book is devoted, as has been said, almost exclusively to a consideration of the policy which a colonizing nation should pursue towards its dependencies, Mr. Willoughby's book avowedly purposes merely to give the reader a description of the methods adopted by the United States in its attempt to govern the various regions which its policy of territorial expansion has brought under its control. In his preface, the author states that he has purposely confined his attention to institutions rather than policies. Within the institutions considered, he includes not merely the central institutions of the dependencies to which attention is directed, but also

their local institutions. Mr. Willoughby regards local institutions as of the greatest importance, on account of the effect they have on the solution of the problem which, according to him, is the key to the policy of the United States toward all the lands which it has in the past subjected and is now subjecting to the colonial régime. This problem is that of preparing them for the blessings of statehood and self-government. According to Mr. Willoughby this is the mission which the people of the United States have felt was theirs in acquiring territory and governing subject peoples. It found its first expression in the ordinance for the government of the Northwest territory, the first document in which we as a people outlined our colonial policy, and it is reiterated in the proclamations and published documents of the Philippine Commission, which are the most recent statements of our colonial policy. This being the case, Mr. Willoughby contends that our success in our colonial experiments should not be judged by the test of mere administrative efficiency, but rather by the degree of political capacity our control of subject peoples has cultivated among them.

This conception of our colonial policy is one which is based upon theoretical ideas as to the absolute brotherhood of man, considered apart from differences in economic condition. It is derived from the idea that the colonial problems which are presented to us now are the same which were presented to our fathers at the time they passed the Northwest ordinance. It makes no allowance for the differences in climate and soil between the territories to which the Northwest ordinance was applicable and the new districts which the fate of war has cast into our hands. Finally, it makes it impossible for us to judge our performance by the standards adopted by other nations.

It may be, however, that those in control of the present colonial policy of the United States, of whose ideas Mr. Willoughby may be regarded as an exponent, are right in their view of the policy which the United States should follow. The view which they adopt is certainly an exalted one. The experiment, for example, of educating our new wards, which the adoption of this view has entailed, is an interesting one. No colonizing nation has ever attempted it before. Who therefore can say it is doomed to failure? But it may not be amiss to point out that it seems to many to involve putting the cart before the horse—an arrangement which, under the ordinary conditions of travel, is not conducive to rapid and permanent progress. To many it would seem that elaborate school systems are supportable only where economic conditions are not altogether primitive, and where the pecuniary sacri-

fices which such a policy imposes upon those who must bear the burden are not so great as to imperil the economic development which under ordinary conditions is necessary for real and lasting progress. It may be our duty to educate our less fortunate brothers, but it would seem more in accord with the dictates of altruism that we should do this at our own expense rather than at theirs.

Apart from Mr. Willoughby's ideas as to the proper colonial policy for the United States to adopt, with which all persons may not agree, the book which he has given us is an excellent presentation of the subject. It furnishes a clear and, for the most part, accurate description of our system of government dependencies. Some errors there are, naturally, but they are neither numerous nor important. Thus, on page 108, the supreme court of Porto Rico is said to consist of judges appointed by the president for life or good behavior. Nothing, however, is said in the act of Congress establishing the present government of Porto Rico (*Laws*, 1900, c. 191, p. 533) as to the term or tenure of these judges, but merely that they are to be appointed by the president and the Senate. On page 217, the statement is made that the judges of courts of first instance in the Philippines are appointed to serve during good behavior. This is not the case. The law (*Laws*, 1902, c. 1369, p. 39) merely provides that these judges shall be appointed by the civil governor and with the advice and consent of the Philippine Commission. Finally, it must be said that, when Mr. Willoughby departs from the task of describing institutions and begins to discuss results, he is inclined to express unjustifiably optimistic views as to the success which has attended the administration of the United States in Porto Rico and in the Philippines, particularly in the Philippines. This is perhaps due to his general approval of the altruistic policy pursued by the United States.

Apart from this general tendency and from the few errors which have crept in, Mr. Willoughby has given us a valuable book—valuable not only because the material which he has had at his disposal has been so arranged as to fulfill admirably the purpose of his work, but also because his book is really the only one which treats at the same time of our past colonial experiments and of the work which we are now endeavoring to do in the Orient and in our own hemisphere, in the arctic regions of Alaska and in the islands of the southern seas.

F. J. GOODNOW.

Lynch Law. By JAMES ELBERT CUTLER. New York, London and Bombay, Longmans, Green & Company, 1905.—xiv, 287 pp.

In the period from 1882 to 1903 the number of persons lynched in the United States has exceeded the number legally executed in all but four years. It is natural that all sober-minded citizens should regard such a state of affairs as a national disgrace, and that the causes and cure of lynching should be widely discussed. There is hardly a popular magazine in the country which has not published articles on the subject in the last decade. It can not be said, however, that the discussion has been very fruitful. Most of the writers have apparently felt that on such a topic as this a coldly scientific attitude falls little short of immorality.

In Dr. Cutler's study we have at last a thoroughly scientific piece of work. The author has proceeded in an admirable way to set forth the conditions under which this social phenomenon has arisen. In its origin it was the product of frontier conditions of life. The pioneers who had pushed on beyond the jurisdiction of regular courts had to deal in some way with the problem of social disorder. The result was a type of summary action against malefactors which may properly be called popular justice. In some cases, indeed, all the forms of regular trial and execution were adhered to. As the frontier receded courts of law took over the functions of "regulators" and "vigilantes." But among a people who had learned to dispense with the courts it has not been easy to restore the reverence for law as it exists in European countries. The courts are regarded merely as instruments of the popular will; and whenever they seem ineffective the people are prone to take into their own hands the administration of justice. In old communities we have had many examples of this deliberate usurpation by a mob of the functions of the courts.

The typical American lynching of to-day is the degenerate offspring of the practice of popular justice of the frontier. It takes place under conditions of great popular excitement, as when the indignation aroused by crime is exacerbated by race prejudice. The deliberate purpose of suppressing crime plays a subordinate part; in its place there arises a primitive desire for vengeance, which demands not only the death of the accused but his torture.

In a chapter on "Lynch Law, 1830-1860," the author points out that lynch law, which had practically fallen into disuse, was revived by the anti-slavery agitation and by the sporadic slave insurrections of the early thirties. In this period, in the majority of cases, mob violence

was directed against abolitionists; but negro crimes of the forms now regarded as typical existed, and the execution of the offenders by mobs was not unusual. The lynching of negroes did not attain the frequency of later days, partly because of the greater ease under slavery of restraining turbulent negroes from serious crime, but more especially because of the property stake in the slave. That negro crime should increase during the anarchic Reconstruction period was inevitable; that an exasperated people, inured to violence by the Civil war, should resort to lynchings with ever-increasing frequency, was no less inevitable.

One of the most interesting chapters of Dr. Cutler's book, entitled "Lynchings," gives statistics of lynchings from 1882 to 1903. While these statistics are not complete, they cover, in all probability, the great majority of cases and serve to indicate general tendencies. Since 1892, it appears, there has been a steady decline in the number of persons lynched. But this decline is not sufficiently marked to warrant the conclusion that the custom is dying out. In the same chapter are given a number of excellent charts, analyzing the statistics of lynching according to race, season and alleged causes.

Dr. Cutler does not hold very optimistic views as to the possibility of abolishing the lynching evil. The fundamental reason for its existence, in the South at any rate, is the general feeling that a system of criminal law which has evolved under the conditions of Northern Europe is not adapted to the task of checking criminal tendencies in an inferior race. A legal system which should differentiate between races, would, however, accord very ill with the spirit of our institutions. Dr. Cutler points out the need of such differentiation, but does not commit himself upon the question of its practicability.

ALVIN S. JOHNSON.

General Sociology. An exposition of the main development in sociological theory from Spencer to Ratzel. By ALBION W. SMALL. Chicago, The University of Chicago Press, 1905.—xii, 739 pp.

In this broad-shouldered volume the head of the department of sociology in the University of Chicago puts forth the well-ripened fruit of more than twenty years of labor in his field. Unlike the ambitious sociological thinker, who projects a system of his own on the basis of some big interpretative idea that has come to him, Dr. Small has resisted the seductions of system-building. He has performed the humbler but more useful task of surveying, comparing and criticising the

chief systems—of making, as it were, an inventory of the quick assets of sociology at its present stage.

The work comprises nine parts by no means equal in importance. Part i, "Introduction," discusses very fully the subject-matter, definition, impulse, history and problems. The second part presents Spencer's system under the title "Society considered as a whole, composed of definitely arranged parts (structure)." Spencer's analysis is accepted as true so far as it goes. The criticism is that he describes rather than explains, compares such institutional exhibits as societies display but neglects the process out of which these products rise. With all his stress on development, the great apostle of Evolution had but a dim idea of the forces that incessantly sculpture institutions and urge society from stage to stage.

After a brief *résumé* of Schäffle's system comes the meat of the volume in the two sections that present the system of Ratzenhofer. In part iv society is considered as "a process of adjustment by conflict between associated individuals." Part v considers society as "a process of adjustment by coöperation between associated individuals." The author's unfolding of the German thinker's system is a labor of love and deserves heartfelt thanks. Now for the first time Ratzenhofer's ideas are accessible in English. These two hundred odd pages contain the author's own constructive ideas and the reader who lacks the time to master the entire book should devote himself to this portion.

Part vi aims to fix the meaning and importance of a large number of concepts that come to light in the author's analysis of the social process. The last three parts consider the social process as "a system of psychical problems," "a system of ethical problems" and "a system of technical problems."

The book is not easy reading, partly because couched in the vocabulary of philosophy but chiefly because the thought is profound. Some parts, however, are over-amplified and the work could be cut down a quarter without sacrificing anything essential. The author preserves throughout the impartiality of the scientist. Indeed aloofness is carried rather far when he says (p. 311) : "Genuine sociology has no vocation as a contestant in the arena where hostile interests struggle for division of material goods." Why should not the sociologist, besides elaborating pure science, throw his influence on the side of those groups whose victory will most promote general and permanent interests as distinct from special and transient interests? Why not align himself with whatever makes for national and racial longevity?

In this careful survey few of the problems that perplex the builder of

sociology miss their due formula and place. Many pitfalls, quicksands and obstructions to which the earlier thinkers were cheerfully oblivious are charted. One big problem, however, is overlooked, namely, the causes and phases of the evolution of human wants. The gradual passage from conflict to coöperation hinges partly on the metamorphosis of the "interests" that actuate man. Back of social evolution lies the development of personality. This arch-mystery is the greatest enigma that sociologists have to solve.

Sociology, as our author sees it, does not appropriate the subject matter of other sciences. There is no poaching on anthropology, economics, comparative jurisprudence or science of religion. Politics and ethics are entrenched on, indeed, but they have their foundations in the social. Sociology is "the science of the social process," that is, "the incessant reaction of persons prompted by interests that in part conflict with the interests of their fellows, and in part comport with the interests of others." In insisting that men unite or divide according as their interests harmonize or clash, Dr. Small seems to neglect the sympathies and antipathies that flow from awareness of resemblance or difference. To be sure, he does not mean merely material interests, and we may, if we choose, see in the mutual repulsion of color races a clash of aesthetic "interests." For my own part, I prefer to keep that useful term "consciousness of kind."

The author harbors no illusions as to the standing of his subject, and his moderation must disarm critics. He thinks that

while sociology up to date can show comparatively little in the way of absolutely new knowledge about society, it has accumulated a wealth of perception about the value of different portions of knowledge, and about ways in which knowledge of society must be tested and organized [p. 64].

Dr. Small rides no hobby and his book betrays no one-sidedness. Whoever reads it attentively will see taking shape the sociology that is to be. The volume is another gratifying evidence that the lines followed by the chief workers of to-day converge. They are so rapidly coming to agreement as to scope, problems, methods and concepts of the new science that henceforth the thing for them to do is to get out into history, ethnography and statistics and bring in answers to set problems. What sociology needs is body.

EDWARD ALSWORTH ROSS.

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Sociological Papers. By FRANCIS GALTON, E. WESTERMARCK, P. GEDDES, E. DURKHEIM, HAROLD H. MANN and V. V. BRANFORD. With an introductory address by JAMES BRYCE. Published for the Sociological Society. London and New York, Macmillan & Co., 1905.—280 pp.

This first annual product of the meetings of the Sociological Society of England has not only an intrinsic, but also a historical—one might say an archaeological interest. It is interesting, even to those who do not hold strictly to a culture-epoch theory, to observe that the discussions in the intellectual England of 1904 upon the nature of sociology and its place as a science parallel those of the sociological America or France of a decade or even two decades previous. Intrinsicly, the scope of the offering is significant of an attempt to combine theoretical and practical work. Thus Branford specifically defines the sociological purpose as twofold :

The first of these two purposes is a speculative one—the understanding and interpreting of that unveiling process or drama of social evolution, in which we are all interested as spectators and as participants. The second purpose is practical—the utilization of our knowledge, gathered and unified from its manifold sources, for the directing, as far as may be, and in part controlling, of this evolutionary process [p. 15].

The history and methodology of sociology are represented in the characteristically large-minded introduction of President James Bryce, in papers by Mr. Branford, Professor Durkheim and M. Fauconnet. "Pioneer Researches in Borderland Problems" include Westermarck's paper on "The Position of Woman in Early Civilization," particularly instructive to those who, familiar with this writer's previous work, observe in this paper his insistence upon the insecurity of our knowledge of primitive civilization and the dangers of dogmatizing. Mr. Mann's "Life in an Agricultural Village in England" emphasizes the needs of the rural community, impoverished economically and spiritually by emigration to the cities.

The opening paper by Mr. Branford "On the Origin and Use of the Word Sociology," attempts to determine the true scope and aim of sociological studies by classifying the studies and classifications which already exist. This is a good beginning. There are too many conflicting ideas in the field of sociological definition and classification for any new one to gain predominance. What is now needed is determination of the criterion according to which definitions should be made.

Another paper by Mr. Branford (pp. 200 *et seq.*) emphasizes the need for classifying and interrelating "sociological specialisms"; and he does well to emphasize that this interrelating is not only a logical process of showing connection between different aspects of social phenomena, but a practical process of relating different vocations in the most useful way. The specialist interpreter of society, whether his standpoint be that of economics, jurisprudence or religion, will find small comfort in this or Professor Durkheim's critical analysis of "the more conspicuous of existing imperfections" due to the specialist sciences (p. 199). The discussion of Durkheim's and Branford's papers is in some respects the most important part of this volume, including names of eminence in almost every social science and constituting an exceptionally valuable cross-section of present opinion upon sociology.

On the practical side, Galton's notable article on "Eugenics" is already familiar to readers of the *American Journal of Sociology*. The subsequent discussion illustrates an almost incomprehensible ignorance, even on the part of physicians, of the results of statistical science in the fields of biology and heredity.

It is characteristic how practical a turn so apparently theoretical a matter as heredity has taken in the hands of the English school founded and led by Galton. Professor Geddes's paper, "Civics as Applied Sociology," is rather less satisfactory in this respect. He surveys the city, giving us the geographical panorama of the seaside industrial centre, with its tributary areas of lowland, upland and highland. He outlines further the historical development of the city and suggests the significance of evolution in every present condition of urban life, both of the city as a collective unit and of the citizen himself. Such a breadth of view is in itself stimulating, but it is not well to assume that from a historical survey, or through the historical sense, can be gained the essential conceptions by which the future of the city may be consciously shaped. Professor Geddes's practical conclusions do not justify his affirmative answer to his own question :

May its coming social developments not be discerned by the careful observer in germs and buds already formed or forming, or deduced by the thinker from sociological principles? I believe in large measure both [p. 115].

The social indications and tendencies given by knowledge of past and present conditions are only possibilities of the future; the actual future condition will be due to some interaction of these tendencies, which the efforts of our generation can in some degree consciously direct.

History is obviously fruitful in suggestions; Professor Geddes implies that it can also offer the ideal which, once attained, we shall use as a test for estimating tendencies and directing our own energies.

MICHAEL M. DAVIS, JR.

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Amerika und die Handelsvertragspolitik. Von MAX SCHIPPEL, Berlin, Verlag des Sozialistischen Monatshefte, 1906.—133 pp.

The adoption by Germany of a new tariff, which is to take effect March 1, 1906, and the threatened tariff war between that country and the United States have given rise to a flood of literature on the subject. The question of the commercial relations between the two countries has been diligently discussed in all its phases in newspaper articles, magazine reviews and books since the beginning of the century, when the revision of the German tariff got well under way. Unfortunately it must be admitted that the German statesmen, business men, economic and political writers have displayed a far more accurate and intimate knowledge of the American aspect of the problem than American writers have displayed in regard to the German point of view.

Herr Schippe's contribution to the discussion of this important problem now confronting the two nations is decidedly one of the most mature that have so far appeared. In it the Socialist member of the German Reichstag and author of *Zuckerproduktion* and *Grundzüge der Handelspolitik* undertakes to review the commercial policy of the United States, and he arrives at some startling conclusions, which are diametrically opposed to accepted ideas on the subject. The most important and original part of the work is contained in chapters iii and iv, devoted to a discussion of the principle of most-favored-nation treatment as applied in the United States.

That the United States has a distinct and original interpretation of the most-favored-nation clause in commercial treaties has been a well settled conclusion, accepted by jurists, economists and statesmen, both in the United States and in foreign countries. Whatever difference of opinion has existed on the subject was only as to the relative merits of the European and American interpretations. It remained for Herr Schippe to discover that the alleged American interpretation, universally believed to date from the rise of the American nation, is of but recent origin, and is in violation of our early commercial treaties, some of which are still in force, notably that of 1828 with Prussia.

Herr Schippe reproduces the two clauses usually appearing in

American commercial treaties, which he designates as clause A and B respectively.

A. No higher or other duties shall be imposed on the importation into the United States, of any article, the produce or the manufacture of Prussia . . . than are, or shall be, payable on the like article, being the produce or manufacture of any other foreign country [art. 5 of the American treaty with Prussia].

B. If either party shall, hereafter, grant to any other nation, any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional [art. 9 of the American treaty with Prussia].

The well known American interpretation of these two clauses is, that clause B has a modifying effect on clause A, so that any reduction of duties granted by the United States to a foreign country, on a basis of reciprocity, cannot be extended to another country, except upon the granting of equivalent concessions by the country desiring to enjoy the benefits of the reduced rates of duty. This is contrary to the European practice, by which any reduction of duties or any other favor in commerce granted to one nation is unconditionally extended to all nations entitled to most-favored-nation treatment.

Herr Schippel, in an elaborate argument, supported by abundant reference to early American diplomatic and commercial history, tries to prove that the American statesmen who drew the early commercial treaties containing the clauses cited could not possibly have intended that clause B should modify clause A. Clause A distinctly speaks of duties, and duties only. It further states explicitly that "*no higher or other duties shall be imposed . . . than are or shall be*" levied on the products of any other foreign country, making the application of the lowest duties in existence most absolute, sweeping and unconditional. Clause B introduces the conditional application of the most-favored-nation clause in regard to "*any particular favor in navigation or commerce.*" Herr Schippel believes that in speaking of favors in navigation or commerce our early statesmen had in mind the numerous matters relating to shipping, port charges, the consular system, etc., all of which were of far greater importance, in our author's opinion, than questions of duties.¹ The matter of customs duties was not of

¹This view was advanced also by Chancellor von Billow in a speech before the Reichstag in the session of 1898-99. (See *Stenographische Berichte des Deutschen Reichstags*, vol. 7, p. 789).

sufficiently great importance at that time, Herr Schippel contends, and tariff treaties, such as we have to-day, were unknown. Herr Schippel handles his historical material with such skill as to make out a strong case.

Setting aside the question of commercial expediency and ethical justification for the respective American and European interpretations, however, it is doubtful whether the early American statesmen meant to make clause A absolute and unconditional. It would be impossible to enter here into an elaborate argument on this point, but one historical reference to our first treaty which contained the two clauses may be of interest as tending to disprove Herr Schippel's theory. The treaty in question was concluded with France in 1778. In 1792 Jefferson, in his capacity of secretary of state, reporting to the president on the negotiations with Spain for a treaty of commerce and navigation, expressed himself against granting any special reduction of duties to Spanish products for the following reason :

If we grant favor to the wines and brandies of Spain, Portugal and France will demand the same ; and, in order to create an equivalent, Portugal may lay a duty on our fish and grain, and France a prohibition on our whale oil, the removal of which will be proposed as an equivalent.¹

This passage, which incidentally shows that the American and European statesmen of the end of the eighteenth century were acquainted with the art of juggling with tariff rates, which Herr Schippel seems to regard as an invention of twentieth century statesmen, clearly proves that our first secretary of state regarded clause B as having a modifying effect on clause A. While it is true that on some rare occasions departures from this view occurred, the American construction on the whole has been so uniformly and consistently applied as to have rightly earned its title to that name.

After all has been said, however, on the historical side of this argument, the question still remains to be answered on its economic and political merits, as to whether it is best to persist in an attitude not shared by any civilized nation in the world and leading to commercial isolation.

N. I. STONE.

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¹ American State Papers, Foreign Relations, vol. 1, pp. 134, 135.

Die Stahlindustrie der Vereinigten Staaten von Amerika in ihren heutigen Produktions- und Absatz-Verhältnissen. Von DR. HERMANN LEVY. Berlin, Julius Springer, 1905.—x, 364 pp.

This book is the most valuable study of the American steel industry that has yet appeared. The author, who spent the year 1904 investigating the conditions here at first-hand, has tried to describe the present position of our steel industry and its possibilities as a competitor in the world-market, and he has performed his difficult task well. Dr. Levy's investigations cover the production of pig iron, steel ingots, rails, structural material, wire and tin plate. His study of pig iron may be taken as an illustration of the method used.

First there is given a rapid sketch of the growth and westward movement of the industry from the time of the Civil war. The past and present cost of producing ore and coke is carefully studied. Transportation rates and methods are investigated in detail, and the effective protection afforded to Pittsburg against European and eastern iron by the high freight rates of the 70's is pointed out. The enormous cheapening of labor cost by better machinery and methods is shown, and the marvelous savings due to combination and integration are reduced, as far as possible, to terms of dollars and cents. The effect of the tariff on production is judiciously stated. All this leads to a detailed study of present costs.

Next follows an excellent discussion of price-movements and the forces causing them. The source and character of demand, the influence of the tariff under various conditions, and the price policy of the great producers, are all subjected to careful examination. Thus we obtain a basis for comparing costs and prices that develops many interesting results.

The same general method is used in discussing each of the other branches of production, the emphasis shifting as the case may require. It is needless to say that the most interesting questions involved center in the tariff and the organization of the industry.

The tariff, as our author shows, has widened the range of fluctuation of prices by raising them inordinately in times of brisk demand, thus stimulating the building of new establishments producing at high cost, a process which leads in turn to over-production and the downward plunge of prices. Consequently we find widely varying costs as between different producers. The tariff enables the inefficient small producer to keep alive by guaranteeing very high prices when times are good, and yet benefits the trust by shutting out its efficient foreign

competitor until prices have overtopped the foreign cost plus freight and duty. The tin plate industry, "the prize scholar of the protection school," receives a drubbing that ought to send it home crying to its mother—to get more protection pap. The whole discussion of the tariff is eminently fair and judicious, reminding one of Taussig. Dr. Levy very sensibly concludes that the iron and steel duties are no longer necessary for developing our giant infant industries, that by artificially raising prices at home they hamper exports and retard the growth of shipbuilding and other industries dependent on cheap steel.

Concerning organization, the results of this study are no less significant. From the standpoint of industrial efficiency, the economy of the integrated concern is abundantly demonstrated. The United States Steel Corporation is credited, rightly in the judgment of the reviewer, with producing steel more cheaply than any of its competitors. Its advantage consists primarily in its control of the best ore and coke lands, and diminishes in those lines of production where raw material forms a relatively small element in cost, being least, perhaps, in tin plate. Moreover, where tremendous plant and continuous large output are required, as in rail manufacture, competitors are few and pooling is easy; hence the rail monopoly. The over-capitalization of the trust demands dividends and cripples it as a competitor; hence it seeks a steady trade and stable profits rather than war to the death, even though its industrial position may be such as to insure victory. The discussion of the steel corporation's price policy shows the operation of the price-making forces under various conditions of quasi-monopoly.

A sane consideration of the United States in the world market brings the book to an end. For the present, the tariff and the overcapitalization of the trust will keep us at home. Even with these influences removed, we shall not destroy our European competitors. With cheaper labor, they will turn to the manufacture of highly-finished products, for which we shall, as heretofore, furnish the raw materials, and an international division of labor will be the result.

Dr. Levy has not escaped without a few errors of statement, but most of them are unimportant. The discussion of early freight rates is unsatisfactory, and the method of determining them used on page 26 is wholly wrong, but the error does not invalidate the conclusion as to the effective protection afforded by early railroad rates. In some cases a more definite indication of the sources from which the various statistical data are drawn would increase the value of the work. A tendency to a rather uncritical comparison of costs and prices occasionally appears, but it may be more apparent than real. A more extended dis-

cussion of the southern iron situation would have been welcome. These are, however, mere matters of detail, and detract little from the general excellence of the work, which will stand as a careful, interesting and suggestive study of the American steel industry in its present-day relations. It is to be hoped that the Bureau of Corporations, in its investigation of the industry, may see fit to carry yet farther many of the lines of inquiry so profitably pursued in this excellent work.

HENRY RAYMOND MUSSEY.

BRYN MAWR COLLEGE.

Restrictive Railway Legislation. By HENRY S. HAINES. New York, The Macmillan Co., 1905.—355 pp.

This book is the formal statement of a course of lectures delivered at the Boston University Law School, and is characterized in consequence by a rapid survey of each phase of railroad activity rather than by an exhaustive treatment of the problem suggested by its title. The latter half of the discussion is confined to the questions of rate-making and regulation, but the introductory chapters have to do with the history and practical problems of incorporation, finance, construction and operation. This book is valuable not because it is a contribution to our knowledge of railroad economics, which it is not, but rather because it presents the matured judgment of a man, who, having enjoyed a rich experience as a railroad manager, now views the question from the standpoint of an observer.

It is a pleasure, in passing, to note his condemnation of the voting trust as a financial device, and his plain speaking concerning railroad accidents, which he charges to the negligence of employees and to administrative mismanagement. But in this season of lively controversy over the policy to be pursued by the national government in the matter of railroad regulation, we turn with most interest to the later chapters, and find that the author is to be classed among the supporters of the presidential policy. He feels that there is no other way to insure substantial justice except to clothe the Commission with power to fix a rate for the future. Whether or not this rate should go into effect at once, pending appeal, should be determined largely by a consideration as to where the greater burden of irreparable damage would fall. If, as is so often maintained by the railroads, the enforcement of the order would seriously disturb existing business relations and affect rates over a wide territory, there would then in the judgment of the writer be good reason for an *ad interim* suspension of the order. No general rate-

making power should be assumed by the Commission, which should confine itself to specific cases presented to it. He argues strongly for the restoration by appropriate legislation of the validity of the long- and short-haul clause of the Interstate Commerce Act and would not permit its suspension except where natural conditions create dissimilar circumstances, and he urges that disastrous rivalry at competitive points should be avoided by the legalization of pooling contracts. The removal of existing inequalities between shippers at local and competitive points is in his opinion the main purpose to be sought in the amendment of the Interstate Commerce Act.

But the author's strongest argument for state regulation is found in his plea for the consumer, the one person whose interests are unrepresented because he has no legal standing in any complaint against railroad abuses. This point is so often overlooked in discussions of the question that the author's own words will bear quotation:

It is these [the consumers] who bear ultimately the cost of production, the transportation charges and the profits of the middlemen, in proportion as the incidence of these burdens may be respectively determined by the principle of supply and demand. It is these who are without a voice in the making of rates on the commodities which they consume and who are incapable of self-protection by reason of their lack of organization. These it is who have a right to claim that protection from the state which can alone represent them when they really need it; and it is only a question first as to what they need, and then as to the efficient means to secure it for them. On this foundation rests the justice of state regulation of railroad rates and the equitable mode of such regulation.

The book is written in a straightforward manner and commends itself as the honest expression of a fair-minded student of the railroad problem. The reviewer would take issue with one assertion of the writer and incidentally enter a plea for the economist. It is stated that cost of service is favored by most theorists as the proper basis for rate-making, and that the principle of charging what the traffic will bear "has never secured any very generous recognition from theoretical rate-makers." If by theorists the academic writers are intended, this is a manifest misstatement, as the publications of economists on the railroad question for the past decade will clearly show.

FRANK HAIGH DIXON.

DARTMOORH COLLEGE.

Economic Methods and Economic Fallacies. By W. W. CARLILE. London, Edwin Arnold, 1904.—x, 284 pp.

Riches and Poverty. By L. G. CHIOZZA MONEY. London, Methuen & Co., 1905.—xx, 338 pp.

It appears now that the one important outcome of the British fiscal agitation is the reawakening of public interest in questions of economic policy. The two books under review bear evidence enough of fiscal inspiration ; but the questions they raise are of far deeper significance. Both writers display considerable familiarity with economic principles ; neither shows much respect for the refinements of recent theory. Both writers appeal to the common sense of the plain man. They are both agreed that no good can come from the protectionist reaction. But in everything else they disagree. Mr. Carlile is a thorough-going reactionary. He is compelled to go back to the seventeenth century to find an economist whose views are thoroughly sound. As for recent policies of social reform, they are all unmitigated evil. Mr. Money, on the other hand, is an evolutionary socialist of the most advanced type. In his view the proper work for the next generation is to extend municipal trading to all the important forms of business enterprise.

The first half of Mr. Carlile's book is devoted to a criticism of modern economic theory. Any candid economist will admit, I suppose, that the modern student is compelled to acquaint himself with a disheartening mass of difficult terminology. Words which mean one thing in common speech mean quite another thing in the economics of the schools ; and it is quite possible that some of the most formidable concepts in economic literature correspond with nothing at all in the realm of facts. Some economists have won great reputations chiefly through translating commonplaces into unintelligible language. Mr. Carlile pleads for a return to plain English. In his view it is not legitimate to define capital or rent or profit so as to exclude what is ordinarily meant by those terms, or so as to include what the practical man would never include. Where the plain man differs from the theorist, he holds, the plain man is necessarily right. That his contention is not altogether wrong everyone will admit. Recent theoretical tendencies indicate in many cases a return to popular economic conceptions. But that the practical man has a monopoly of intelligence and is incapable of calling things by wrong names seems a preposterous view. For example, it is impossible to say, without detailed investigation, what the business man means by his profits ; one man will include items that another will

exclude. It is impossible to say what Mr. Carlile means by profit when he says that it is the sole source of the fund for the employment of labor. Ambiguity of expression may do little harm in practical affairs; it renders scientific discussion impossible.

Because the business man regards money as unvarying in value, Mr. Carlile is compelled to adopt a similar view. He alleges that there is a theory current among economists that one thing fluctuates in value as much as another. "Wheat and iron warrants fluctuate just as much and no more than gilt-edged securities or than gold itself" (p. 139). It would be interesting to learn the names of economists so innocent of the world as to hold to any such view, but the author fails to mention them. Can it be that he sees no difference between the propositions, "all things fluctuate in value," and "all things fluctuate equally in value?"

The above is a fair illustration of the author's method. He selects extreme cases of futile theorizing, and forces upon the theories a meaning wholly foreign to anyone's thinking. In many instances, accordingly, where he has really a good case, his obvious unfairness prejudices the reader against him. In the second half of the book, where he discusses the protectionist fallacy, he again weakens his case by running amuck among those whose views are practically identical with his own. Why, for example, should he waste his energy in refuting the notion that fluctuations in exchange rates affect exports and imports? "The economists," he says on page 324, "do not consider how many commodities there are that have a definite market to which they go no matter what the price is." No doubt export of such commodities is but little affected by the rate of exchange. Economists hold, however, that there are some traders who are in doubt as to whether they shall export certain commodities or sell them at home. It is only in such cases that fluctuations in exchange rates have any effect upon exports. It is worth noting that Mr. Carlile uses the identical method which he decries when he undertakes to prove that an import duty on grain will raise the domestic price (p. 254).

Mr. Money's thesis is an old one; the rich in England are too rich and the poor are in an utterly hopeless state. He shows in a very interesting manner that the English nation consists of a vast mass of desperately poor people, with a thin crust of comfortable and wealthy persons. According to his calculations, the data for which are conscientiously given, £8,300,000,000 of the national income is enjoyed by 5,000,000 persons, the remaining £8,800,000,000 being parcelled out among 38,000,000. More than one-third of the total national income goes to one-thirtieth of the population.

The chief consequence of this "error in distribution" the author holds, is the centralization of the real governing power in a few hands. What the working man must do, whether he must toil for noble or for ignoble ends, is determined by the caprice of a small and irresponsible class. "The possessors of wealth exercise the real government of the country, and the nominal government at Westminster but timidly modifies the rule of the rich" (p. 127). The rule of the rich, as the author maintains and demonstrates, to his own satisfaction, at least, is hardly a beneficent one.

To correct the "error in distribution" the author proposes a systematic endeavor on the part of society to give every child born in England a fair chance in life. Wherever necessary, he would supply funds out of the public treasury for poor mothers, to free them from the necessity of earning a living when the care of their infants requires all their time and strength. 300,000 children are born in poverty every year and, under present circumstances, necessarily have little chance of remaining in good physical condition through the first weeks of life. £3,000,000 would go far towards caring for the mothers and children in the period of their greatest need. As the national income from profits, dividends and rents aggregates £9,000,000,000, the cost of the enterprise seems moderate.

The education of the child is hardly less important. What does Great Britain do for its children in this respect? Little of practical importance. The housing of the people must also be improved, if the next generation is to be worthy of the nation. Mr. Money would have the nation loan money at extremely low rates—say one and one-half per cent—to municipalities, to be laid out in a gigantic suburban homes scheme. Private philanthropy has already amply demonstrated the feasibility of the plan. To finance these reforms, Mr. Money suggests what appears to be a rather moderate increase in the income tax and a decided increase, particularly in the case of large estates, in the death duties.

The book is on the whole a very interesting treatment of problems which economists are disposed to avoid. In resting his hopes for reform on the improvement of conditions for those who are yet to be born, Mr. Money escapes the usual objection to social reorganization, that the poorer classes of to-day do not possess the characteristics requisite to thorough-going economic democracy.

A. S. JOHNSON.

Der nationale Besitzstand in Böhmen. Von DR. HEINRICH RAUCHBERG. Leipzig, Duncker & Humblot, 1905.—Three volumes : Volume I, xvi, 701 pp ; Volume II, xii, 415 pp. ; Volume III, charts and maps.

Although the expression “der nationale Besitzstand” is not easy to translate, the subject of Dr. Rauchberg’s study is readily stated : it is the relative position of the two rival nationalities in Bohemia as regards territory and population. These volumes, the fruit as he tells us of three laborious years, represent in the main a working over of the results of the Austrian census of 1900, both published and unpublished ; these are compared with former census figures and supplemented by statistics of movements of population, of education, of land-holding and wages, together with some special social and industrial inquiries made *ad hoc*.

To any one familiar with the national conflict which rends Bohemian life, the fact that the work was undertaken as a commission from a “Society for the furtherance of German science, art and literature in Bohemia” at once suggests partisanship. But though Dr. Rauchberg is here, as elsewhere, frankly pro-German, and though this inevitably determines his point of view, the book is a solid piece of scholarly work.

The discussion of the situation of the two classes of Bohemian population—the German speaking and the Bohemian or Czech speaking—is taken up with reference to the following matters : their numbers, absolutely and relatively considered ; density, conditions of housing and settlement ; movement of population, migration, assimilation ; sex, age and civil condition ; religion, education, occupation, social classes ; special conditions in Prague ; distribution of property in land ; and finally wages. In this mass of ably handled material, with the full set of figures for ready reference and the excellent charts which make up the third volume, is a rich mine of information which can be only indicated here.

With regard to the question which is the main pre-occupation of the author, the relative growth of the two nationalities, the result is that there has been in general little change, either in their proportions or in their geographical position for the last fifty years or, probably, for a century (p. 669).

The changes of the last decade are of importance only if regarded as symptomatic and because each party makes the most of every trifle. Two points are to be noted. In the first place, in mixed regions with

a German majority the Czech minority has grown faster than the German minority has grown in districts mainly Czech (p. 666). The mixed territory is, however, only a small part of the country after all. In 1900, only 3.28 per cent of the population was living in a *Gemeinde* with a minority so large as one-fifth of the whole (p. 665). For the most part one nationality or the other strongly prevails. Hence the second fact, that German districts have grown faster than Czech districts—a respective percentage gain of 7.63 and 5.98 (p. 666)—numerically far outweighs the much discussed invasion of German territory by Czechs, leaving to the latter 62.62 per cent of the population in 1900 instead of 62.79 as in 1890.

These facts are naturally only the reflection of the complex changes which have been going on in the life of the people, predominant among which is the change from a mainly agricultural to a mainly industrial state. While in 1869 agriculture and forestry occupied 54.44 per cent of the population, the percentage sank to 46.85 in 1890 and 41.12 in 1900 (p. 459).

With this alteration, and largely as a result of it, have gone very important shifting of population. In the first place there has been an important emigration movement. In the decade 1890 to 1900 Bohemia sent abroad some 131,000, or 2.24 per cent of the population of 1890 (p. 260).¹ Beside this nearly 3000 left Bohemia for other parts of Austria.

Much more important is the internal migration. Almost one-half of the population is living elsewhere than in its native place. This movement has been in the main the familiar one from agricultural districts to manufacturing and industrial centres and from the country to the city. Since the German population is more largely urban and industrial than is the Czech, migration of this sort, so far as it carries people from territory of one national color to another, is preponderantly a movement of Czechs into German districts.

This increasing city and factory population shows the changes naturally to be expected: a higher birth rate (or rather one maintaining itself better against the general tendency to sink), due to the disproportionate presence of persons in the prime of life and to earlier marriages, a greater number of illegitimate births and of still births, and especially a higher rate of infant mortality; the net result is a more rapid natural increase than under the conservative conditions of rural districts.

¹ The American census figures, it may be worth noting, show an increase of 39,000 Bohemians living in the United States in this decade.

This then is the explanation of both facts first noted, the growth of Czech minorities in German districts and the more rapid growth of German-speaking territory as compared to Czech. Both merely mirror the rise of industry with the gathering of Czech laborers to mines and factories in German territory and the more rapid growth of urban and industrial population compared to that in the depleted countryside.

It can be readily seen with what anxiety the results of all this must be canvassed by the two sides, each so eager to gain any advantage in territory and numbers.

The recommendations of Dr. Rauchberg are mainly two. The first of these is to improve conditions, especially in mining and industrial communities, which will mean increasing this (more largely German) population. It is characteristic of the grievous pre-occupation with the national rivalry that a man like Dr. Rauchberg should here and elsewhere base his plea for a more advanced *Socialpolitik*, aiming at the decrease of infant mortality, of the labor of married women, of unsanitary housing conditions and so forth, on the ground of nationalistic advantage—a ground doubtless chosen not as the best but as one likely to enlist support.

The second recommendation is assimilation. For this process the Czechs are much less favorably placed than the Germans, to whom, as we have seen, so many Czech laborers immigrate. Will these miners and factory hands permanently increase the Czech element or will they become Germans? Dr. Rauchberg considers it encouraging that in Vienna two-fifths of those born in districts Czech or mainly Czech in language speak German (p. 690)—a state of things very different from that which Americans are accustomed to expect in their "foreign colonies."

This suggests the question of the conception of nationality, which Dr. Rauchberg discusses in his first chapter. He frankly abandons the ethnological ground and the idea of affinity of blood in favor of community of culture and national consciousness of which language is the evidence. The Austrian census adopted this test of nationality in 1880, stating the *Umgangssprache*, the language of ordinary intercourse, not necessarily the mother tongue. Minorities complain that this method is to their disadvantage, as a man must speak the language locally in use. This is a fair criticism when national differences are not so emphasized that a man clings to his own language in every case, at least on the census card, so as to present the spectacle of a single individual claiming an *Umgangssprache* peculiar to himself in his locality. The method of the Hungarian census inquiry as to the mother

tongue sounds fairer, but as there the instructions are that a man may give as such the language he prefers, full play is given for social and official pressure to Magyarize. It may be noted as a curious result of reckoning nationality by language and as a sign of the times in Bohemia, that the majority of the Jews have gone over to the Czech camp.

Meanwhile the whole question of national politics in Bohemia is being metamorphosed by the change already spoken of, which has converted so many thousands of agricultural laborers, for the most part quite indifferent to political interests, into an industrial proletariat, sharply conscious of its desires and welded into a compact and powerful socialist organization which seeks political power as the first step toward the realization of its plans.

The present distribution of voting power, which is on the principle of the representation of interests, no longer corresponds to the actual situation—even if one were ready to admit that it did so in the beginning of the sixties, when it was arranged. The one-sided preference shown to the great landed interests was at least less preposterous in an agricultural than in an industrial state. The change that has taken place must in the end bring about a reform of the suffrage. Dr. Rauchberg probably little guessed how rapidly this question would press for settlement. With or without a change in representation, however, the actual shifting of economic power must make itself felt.

Dr. Rauchberg's conclusions are, first, that the Germans, with their industrial advantage, will gain as industrial interests win more influence, and secondly that the working class, as it comes to the fore politically, will not indeed cease to be influenced by national feeling but will conceive the matter differently and pursue a different policy from that of the middle class, which has been largely seeking selfish class ends under the guise of national advancement. In this Dr. Rauchberg refers apparently to the Czech demand that a knowledge of both languages shall be required of administrative officials, a demand which would tend to throw office into the hands of the more bilingual Czechs. The Czechs, too, send their sons more largely to the gymnasia, universities and technical institutes than do the Germans, and the former have therefore a more pressing desire to secure official and semi-official careers for the next generation, for whom there are fewer business openings than among the Germans (pp. 693-4). In the lower ranks there is less clash of material interests. The outlook for material peace between the two nationalities is good. "This is my wish and my hope."

EMILY GREENE BALCH.

WELLESLEY COLLEGE.

The New Japanese Civil Code as Material for the Study of Comparative Jurisprudence. By NOBUSHIGE HOZUMI, professor of law in the University of Tokio, barrister-at-law of the Middle Temple. Tokio, 1904.—73 pp.

Ancestor Worship and Japanese Law. By NOBUSHIGE HOZUMI. Tokio, Maruya & Co., 1901.—iv, 74, (3) pp.

Die Hauserbfolge in Japan, unter Berücksichtigung der allgemeinen japanischen Kultur- und Rechtsentwicklung. Von RIUCHI IKEDA. Berlin, Mayer & Müller, 1903.—xxi, 269 pp.

Die Lehre von der japanischen Adoption. Von FUSAMARO TSUGARU. Berlin, Mayer & Müller, 1903.—xxiv, 228 pp.

The Early Institutional Life of Japan: A Study in the Reform of 645 A. D. By K. ASAKAWA, lecturer on the Far East at Dartmouth College. Tokio, 1903.—(7), 355 pp.

No better introduction to the study of Japanese law can be found than that which Hozumi offers in his brief essay on the *New Japanese Civil Code*—an essay prepared for the Congress of Arts and Sciences at St. Louis in 1904. It is wider than its title; for it outlines the earlier stages through which Japanese law passed, and in summarizing the innovations which have been made by the civil code in the law of personal capacity, of family and of succession, the author indicates the previous development of these branches of the law. In this part of his essay, Hozumi has restated the principal points brought out in his earlier pamphlet on *Ancestor Worship*. This is an illuminating introduction to the study of Japanese family law, but it has a wider significance. It throws much light on early Mediterranean institutions. While Hozumi courteously assures us that Fustel, Maine, Lubbock, Jhering and Hearn "have grasped the true inwardness of a custom which is totally foreign to them" in a manner which is "little short of marvellous," it is obvious, as he adds, that "they have observed the phenomena from without," and not, as he does, "from the point of view of an ancestor worshiper." Such studies as his serve the double purpose of confirming conclusions which were previously in a measure conjectural and correcting misapprehensions which outsiders could not well escape.

Hozumi's *Civil Code* and several of the other works under review give us a clear picture of the rapid assimilation of West European law since 1868, and of the movements which led to the adoption of the

existing civil code. To the reader familiar with the reception of Roman law in Germany and in the Netherlands at the close of the middle ages, the similarity of the Japanese reception is most striking, although Japan passed in a generation through stages which in Europe covered centuries. Japanese students went to European universities as the north Europeans, seven centuries earlier, had gone to Bologna and other Italian universities. They returned to Japan, as the "legists" trained in Italy had returned to northern Europe, filled with a conviction of the superiority of their new learning. In both instances the study of the foreign laws was taken up at home in schools organized on the foreign model, while translations and treatises in the vernacular made the alien laws familiar to widening circles. In both instances, the conviction developed that the imported law was written reason or natural law of universal validity; it began to be cited in the courts and incorporated in judicial decisions. In Japan, as in mediæval Europe, the practical reception was hastened by the organization of a centralized administration of justice conducted by judges learned in the foreign laws. Almost simultaneously, in Japan, came a legislative reception of the foreign rules, at first piecemeal, and then in bulk, by codification.

In some respects, however, and notably in the completion of the reception by legislation, the Japanese movement differed from the European. No historical links connected the Japanese state with Europe as the theory of continuous empire connected the mediæval European states with the ancient Roman world; nor was there any single embodiment of West European law that could claim such authority as the law-books of Justinian commanded in the European middle ages. There was, however, one law book which at first seemed to enjoy an equivalent supremacy in Japanese opinion—the code Napoléon—and Japan came near receiving this code, almost in bulk, by process of enactment. In 1890 a civil code, compiled by a Frenchman and based very largely on the great French model, was actually adopted by the Council of State, to go into force in 1893. Then came a Japanese national reaction, closely paralleling the modern European reaction against pure Roman law. In this reaction the leading part was played by Japanese like Hozumi, who had studied in England and in Germany. Their appeals to Japanese national feeling found an energetic response; the introduction of the code of 1890 was postponed; a Japanese committee of revision was appointed, and from this committee came a new and independent code, which was adopted 1896-1898 and is now in force. In its general arrangement it is more German than French; in its details it is eclectic. Its fundamental conceptions and its rules regard-

ing movable property and obligations are substantially West European. Its rules regarding family and succession are based on the ideas and customs of Japanese society, although in these matters also occidental points of view have been accepted and occidental rules have been introduced.

The house (*iye*), which constitutes the fundamental unit of Japanese society, is not the modern European family, nor, although it resembles in some respects the old Roman family, is it by any means identical with the latter. Like the Roman family it has a single head but it may contain not only the wife and the children of the head and his unmarried sisters, but also his brothers and his uncles, with their wives and children. It may even contain his parents and his grandparents. In other words, it represents a development intermediate between the Roman *gens* and the Roman family; and the further back its history is traced, the more like a little clan does it appear.

The succession to the headship, which Ikeda, in his *Hauserfolge*, treats in a systematic and scholarly manner, is in many respects peculiar. A change in the headship occurs not only when the head dies, but when he abandons the active direction of the affairs of the house (*inkyo*). It is this not uncommon abdication which makes it possible that the head of the house may have under his authority his own father and possibly his grandfather also. Succession is regularly determined by primogeniture, with a preference of males; but females take precedence over heirs of a subsequent class, and female househeadship is by no means unusual. When the headship or the expectation of headship vests in a female, her husband enters her house; and, according to the terms on which he enters, he may come under her authority as a sort of prince consort, or he may become head of her house. If there are no heirs of the first class, i. e., no real or fictitious descendants, the head may designate the successor, and if there be no legal or designated successor, the house may elect a new head.

Like the old Roman family, the Japanese house may be perpetuated by adoption, and the motive for adoption is the same, *vis.*, the maintenance of the *sacra*. Tsugaru's *Lehre von der Adoption* is as creditable a work as Ikeda's. Each of these writers treats his special topic in connection with the general organization of the house. Half of Tsugaru's monograph and more than half of Ikeda's are historical. Each writer, moreover, is familiar with the principal European works on the family and each utilizes analogies of occidental legal development.

The chief criticism which suggests itself to the reviewer concerns

the uncritical spirit in which the Japanese legal writers—not merely those under review, but others as well—deal with the earliest sources of Japanese history. A foreigner, unable himself to read these sources in the original, may not presume to say that this or that specific statement can not be true; but when he encounters statements which are contradictory, he has the right to say that some of them must be incorrect. The description of the early Japanese house which these writers give us cannot be true, because it does not hang together; its details are more than inconsistent, they are incompatible. We are told that, before the reception of Chinese ideas and customs in the seventh century of our era, women enjoyed a more independent position than in later times; that they could hold land in their own right, and that they fought in war; that the early Japanese marriage left the wife among her own kinsfolk, with the husband on the footing of a surreptitious although licensed visitor; that paternal authority, if it existed at all, was imperfectly developed; that the word for household authority (*katoku*) was borrowed from the Chinese; that half-brothers and sisters who had different mothers could intermarry, because the community of blood derived from the common father was ignored. Not all of these statements, indeed, are found in all the books under review, but some of them are found in each.¹ At the same time these writers constantly assume and repeatedly say that the primitive Japanese house was based on the worship of the deceased male ancestors; that the head of the house was charged with the duty of maintaining this worship; that the succession to the headship vested normally in the eldest legitimate son; and that, in default of a male heir born in the house, adoption was resorted to in the earliest times, because the worship of the deceased male ancestors properly devolved upon a son of the house. In other words the European reader is asked to believe that the patriarchal house existed in a society living under the mother-right system of kinship and exhibiting matriarchal features.

Asakawa, in his *Early Institutional Life of Japan*, throws some light (pp. 7-12) on the character of the sources from which information is drawn regarding primitive Japanese customs. He tells us that the art of historical recording found its way into Japan ca. 600 A. D.; that the oldest chronicle which has come down to modern times, the *Kojiki*, was composed 711-712 A. D.; that it is especially full and precise as

¹ See Hozumi, Civil Code, p. 28; Ikeda, p. 5, note 1, p. 7, note 3; Tsugaru, p. 33, note; Asakawa, pp. 53, 57-59, 73, 98, 105. Cf. Iwasaki, Ehrerecht, pp. 11, 12, and Sakamoto, Ehescheidungsrecht, pp. 10-12.

regards events from the seventh century B. C. to the fifth century of our era; that it begins to lose "its narrative detail" after 488 A. D. and stops with the year 628. He tells us, further, that there were older (seventh century) records of which the *Kojiki* apparently makes no use, and that it "was mainly based on the recital of one Hiyo-no-Are, a person of strong memory." To this it must be added that "the language of the *Kojiki* appears to be the vernacular of the date of its composition"; that in it the Chinese characters are used partly in a phonetic way; and that modern Japanese scholars do not agree in their interpretation of all of its characters.

The other source from which information is drawn regarding the first thirteen centuries of Japanese history is the *Nihongi*, composed 720 A. D. This, Asakawa tells us, "is written in a Chinese style as pure and dignified as its authors could make it"; and it is "so thoroughly unnational in many places, not only in language and style but also in thought, that the student has to be on his guard on every page." The record purports to be based, in part, on seventh century sources, and the narrative grows fuller as it approaches the year 697, at which date it closes.

That the *Nihongi* was written with a pro-Chinese bias Asakawa recognizes; but he takes seriously the claim advanced by the author of the *Kojiki* that the primary purpose of this compilation was "to record the genuine traditions of national life before they should become too disfigured by the wear and tear of time." The opinion of an outsider, who has no qualifications except a general knowledge of the historiography of occidental peoples, may be of little value; but to the reviewer, considering that every successful revolution in the occidental world has immediately striven to legitimate itself by falsifying antecedent history, and that the *Kojiki* and the *Nihongi* were written a couple of generations after the reform of 645 A. D., it seems probable that both of these early chronicles were revisions of the Japanese tradition in accordance with the new and dominant views, and that the *Kojiki*, with its interesting figure of the old man of strong memory and its use of the vernacular, was the more adroit of the two reconstructions.

Of the conflicting statements above noted—some pointing to indigenous mother-right, others to a primitive patriarchal household—one set or the other must be fictitious. If Japan, like China, had agnatic succession and the worship of male ancestors before the reception of Chinese ideas and customs, it seems difficult to account for the invention of mother-right traditions. If, on the other hand, Japan had neither male ancestor worship nor agnatic succession until these came

from China by the way of Korea, it is perfectly intelligible that the ancient tradition should be falsified in accordance with the new ideas, without wholly expunging all traces of the older customs.

To the outsider it looks as if the critical acumen of Japanese scholars was somewhat blunted by religious and political prepossessions. To admit that the worship of male ancestors, which plays so important a part in their existing social life, is perhaps not indigenous, and that the chronicles which record an unbroken succession of emperors from the seventh century B. C. are possibly untrustworthy, may well be as difficult for them as the development of "the higher criticism" of the Bible has been for Europeans.

Asakawa's book touches but incidentally on the legal problems which occupy the other writers under review. He is chiefly interested in the economic and political organization of Japan before and after the reform of 645 A. D. The first third of his book is devoted to the earlier Japanese civilization; the second third to Chinese political ideas; and the remainder to the events and results of the reform. Room is found for a brief supplementary chapter showing how the imperial supremacy, which was established in the seventh century by breaking down the older clan organization and by substituting for the nobility of birth a nobility of service, was gradually undermined by the new military organizations, until, in the twelfth century, the feudal régime was definitely established.

Limitation of space and the fact that this QUARTERLY is not primarily a law journal prevent the reviewer from discussing the best parts of the books of Ikeda and of Tsugaru, *viz.*, those parts which deal with the mediæval and modern law of the Japanese house and which explain the interesting compromise which the new code has made between the historical solidarity of the house and the demands of modern individualism.

All of these books are so well written that the reader is seldom reminded that their authors are in each case using an acquired language. The four legal works are thoroughly lawyer-like and measure fully up to the standard of German and English legal literature. Asakawa's book is not only a valuable contribution to history but to political theory as well. None of the books except Asakawa's is indexed—an omission which is especially to be regretted in works of so technical a character as those of Ikeda and Tsugaru.

MUNROE SMITH.

The Growth of the Manor. By P. VINOGRADOFF. New York, The Macmillan Company, 1905.—viii, 384 pp.

Professor Vinogradoff's new work on *The Growth of the Manor* is not a sequel to his *Villainage in England*, nor is it by any means such an epoch-marking book in the field of mediæval history. In the twelve years that have elapsed since the publication of those remarkable essays, many workers, among them Maitland, Round and Seebohm, have been busy with manifold problems of mediæval economy and social structure, and now Professor Vinogradoff seeks to sum up, especially for students of general history, the results of the researches of the past decade. He is not, however, playing the part of a compiler but is rather undertaking new syntheses on his own account, using recent achievements in his field as the basis of his argument and conclusions. He attempts bold constructive work and seeks to weld his materials into such form that the whole will be useful, not only to students of mediæval institutions, but to those who are working on the larger problem of social evolution.

The volume falls into three parts. More than one hundred pages are devoted to the period before the Anglo-Saxon invasion, and deal with Celtic tribal arrangements and Roman influence. At the outset there is a much needed warning that "we must guard carefully against the tempting idea that a state of society, even of an ancient one, may be treated as a system." After an examination of the elements of kinship and land holding, with their concomitants in Celtic society, our author arrives at certain conclusions, some of which will not seem new to those familiar with the theories of Mr. Jenks. Thus he concludes that aristocracy develops through economic struggle within the mass of freemen; that some of the elements of the manor are discoverable in this early period, but they are "in an incomplete and disconnected state, and overshadowed by the influence of other principles"; that serfs, free proprietors and free tenants are to be found dwelling side by side, but in separate communities and without the organization fitted for the maintenance of a dominant free class. Professor Vinogradoff's conclusions from the study of Roman land law, taxation and estates leads him to regard as "an exaggerated simplification of the historical process" Mr. Seebohm's somewhat rigid conception of the Roman villa in history. He emphasizes the military character of Roman occupation, the necessity of adaptation to local conditions in the distant parts of the empire, and the general survival of Celtic arrangements and communalistic practices which readily fused with those of the invading barbarians.

The second portion of the volume, comprising about two hundred pages, deals with the old English period, in chapters on the English conquest, the grouping of the conquerors on the soil, the character of the shares in the township, agrarian arrangements, township organization, the unit of land-holding and manorial origins. While no quantitative estimate of the character of the English invasion is attempted, our author's conclusion is that it was so considerable as to produce profound changes and necessitate a thorough remodeling of society. This is based largely on Maitland's argument from language and the extant historical information as to the severity of the conflicts during the invasion. The early English class system, as reflected in the Kentish laws, is regarded by Professor Vinogradoff primarily "as an arrangement for estimating personal rank and tribal qualifications"; he does not find in it "any distinct elements of wealth, landed property or special connection with royalty." This is in keeping with the main thesis underlying the work, that no simple theory of conquest and subjugation will explain the social conditions on the eve of the battle of Hastings. Those conditions are to be explained rather by "a gradual spread of labor, discipline and subjection over a class of free tribesmen, as their means of sustenance grew smaller while military and fiscal requirements became heavier."

In his concluding pages, Professor Vinogradoff attacks some of the important problems of feudal England in three chapters on the principles of the Domesday survey, ownership and husbandry and social classes. The Norman conquest is regarded as a series of events which completed the establishment of a military aristocracy and which systematized old elements under the pressure of stronger central forces. Under the new conditions, the legal theory of the feudal state transformed individual and communal rights into rights derived from the overlord; the village community was transformed into a manor, partaking of the characteristics of an estate and a unit of local government; "but underneath this system the ancient principles of communal action and communal responsibility were still fully alive."

It is clear that Professor Vinogradoff's book is an argument, and the various generalizations upon which the main thesis rests will be received by students in different fashions according to their temper. Those who have grave suspicions of what appears to be even legitimate use of constructive imagination, and who date institutions only from their first appearance in well authenticated history, will find plenty of vulnerable points in the present volume. A single example will suffice. Our author, refusing to recognize the sharp line often drawn between the

inquest and compurgation or other manifestations of communal delegation, carries the idea of township representation back into the Anglo-Saxon period. Not only does our author fail to cite evidence for this conclusion (his reference to Pollock and Maitland, i, 346, is clearly wrong) but no one who has sustained it has yet shown authority for it. Dr. Stubbs, who has made out perhaps the best case for it (vol. i, p. 128), does not give any really convincing proofs of his contention. The main stay of the theory is to be found in the *Leges Henrici Primi*, a private collection of laws not thoroughly trustworthy for the Norman period to say nothing of the days before the Conquest. The real problem concerns the extent to which we carry institutions backward and what are the limits of legitimate historical constructive imagination. No two men will entirely agree on these points, and Dr. Vinogradoff, by his good judgment and careful scholarship, has won a right to his own interpretations. His present work will be welcomed as a substantial and suggestive contribution not only to mediæval history but also to sociology.

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BOOK NOTES

Rhode Island, A Study in Separation, by Irving B. Richman (Houghton, Mifflin & Co., 1905), will take its place among the most satisfactory volumes in the *American Commonwealths Series*. It reveals a philosophical insight and possesses a literary flavor which are not commonly to be found in works of this class. Thoroughly enjoyable sketches appear in its pages of eighteenth century society in Newport and old Narragansett, while the book is sufficiently modern to indicate the changed conditions which exist in those localities to-day. Mr. Richman, while not excluding political history or a variety of personal touches and individual traits, conceives of his subject as essentially the history of three industrial and social groups which have been superimposed upon one another. The first was the agriculturists of the seventeenth century, the early settlers, who were extremely individualistic and separatist in spirit, and who survived as the advocates of reckless issues of paper money in the eighteenth century and as the narrow and corrupt inhabitants of the back country towns of the present day. The second group was the merchants who centered in Newport, fostered piracy and illegal trading, opposed the commercial restrictions of England, but in many instances adhered to the loyalist party during the Revolution. The third group was the manufacturers, who came to the front in the early nineteenth century and with whose growth Providence and the other cities of northern Rhode Island have assumed the lead. The two earlier groups have survived, and the intrenchment of the farmers in control of the towns, and through those of both houses of the legislature, has kept Rhode Island still true to its original separatist spirit. So modern is Mr. Richman in his treatment of the theme, that he discusses the alliance between the Republican machine and the towns and the efforts which are now making on the part of the city population to break this union and secure a more equal representation.

Dr. Frank Hochstetter has published in Schmoller's *Forschungen*, under the title *Die wirtschaftlichen und politischen Motive für die Abschaffung des britischen Sklavenhandels*, a thorough and interesting study of the conditions which led the British government to abolish slavery and the slave trade in the West Indies in 1807. While allowing that political and moral considerations had an influence, he seeks the explanation of the event chiefly in the changes in international trade

consequent on the American Revolution and the wars of the French Revolution, and on the connection which these changes had with the relative productivity of slave as compared with free labor in the West Indies. This view of the event is not original with Dr. Hochstetter, but he has developed it clearly and with abundant illustration.

In a paper read before the Royal Historical Society in May, 1904, and published in their *Transactions*, Professor Edwin F. Gay of Harvard discusses the "Midland Revolt and the Inquisitions of Depopulation of 1607" in England. This was one of the later disturbances which was occasioned by the inclosure movement of the preceding century. As an incident of his critical and judicious study of the imperfect records of the event itself, Professor Gay discredits the view of Pollard, who would explain the greater revolts of the sixteenth century as wholly the result of inclosures.

The reader of the later volumes of Samuel R. Gardiner's *History of the Commonwealth and Protectorate*, especially of the third volume of the series (Longmans, 1901), will be impressed with the great loss which English scholarship has suffered in his death. The thoroughness of his research within the field of political history and the even balance of his judgment justify the highest confidence in his results. Especially suggestive in this volume are his likening of the aims of Cromwell with those of Strafford, and his account of the rise of the colonial policy of the period. The student will also do well to compare Gardiner's treatment of the Cromwellian settlement of Ireland with the more vivid and less balanced account which is given by Prendergast.

Modern methods of historical instruction have called forth a new kind of educational apparatus, the source book, which corresponds to the laboratory in natural science. Collections of carefully selected documents and of extracts from the various classes of historical material are appearing not only in this country and England, but in France and Germany. Two of the more recent compilations of this character are *A Source Book for Mediæval History: Selected Documents Illustrating the History of Europe in the Middle Ages*, by Oliver J. Thatcher and Edgar H. McNeal (New York, Charles Scribner's Sons, 1905; xix, 619 pp.), and *Select Documents Illustrating Mediæval and Modern History*, by Emil Reich (London, P. S. King and Sons, 1905; xvi, 794 pp.). The selections made by Professors Thatcher and McNeal are classified under ten headings: "The Germans and the Empire to 1073," "The Papacy to the Accession of Gregory VII, 1073," "The Struggle between the Empire and the Papacy, 1073-1250," "The Empire, 1250-1500," "The Church, 1250-1500," "Feudalism," "Courts,

Judicial Processes, and the Peace," "Monasticism," "The Crusades," "Social Classes and Cities in Germany." The translation appears to be done with unusual care and the documents are abundantly annotated. There can be no doubt that the collection will prove of great value to the teacher, especially if he be primarily interested in the troubles between emperors and popes and in the institutional history of Germany. Dr. Reich's book differs from that just described in covering a much longer period—from Constantine to Bismarck—and in giving the documents in the original tongues, Latin, Greek, English, French, German and Dutch. The Dutch and German material is accompanied by a translation. The writer assumes that "it could not be reasonably supposed" that a purchaser of a book like the present was unacquainted with the two classical languages or with French." Probably an American editor would have designated the Greek, rather than the German, as one of the languages which might expediently be rendered into English. The documents are not arranged chronologically, but under subject headings and countries. We first find a few treaties, from Westphalia to the second Peace of Paris, 1815. Then comes "Church History" from the alleged Edict of Milan, 313, to the bull *Pastor Aeternus*, 1870; and third, "General Institutions of the Middle Ages" from the Capitulary of Quierzy, 877, to the legalizing of the University of Orleans in 1312. Then the history of various European states is illustrated; the Holy Roman Empire, France (from the Edict of Nantes) and England receive most attention, and a half-dozen documents relating to the United States are given. There are brief comments, technical bibliographies and a very full index. The editor has not hesitated to give brief extracts, as in the Edict of Worms and the bull sanctioning the Jesuit order. In the latter, he has omitted, we venture to think, the very marrow, namely the constitution of the order. On the whole the selection seems well calculated to meet the needs of teachers and advanced students. The volume will be supplemented by a *General History* which Dr. Reich has in press.

Among the French colonies, past and present, Canada, Louisiana, India and even Madagascar have all received at the hands of the archivist and the bibliographer an amount of attention more or less proportioned to their historical importance, but this is not true of the West Indian colonies of France. As M. Jacques Dampierre justly observes in his *Essai sur les sources de l'histoire des Antilles françaises, 1492-1664* (Paris, Picard et Fils, 1904; xl, 239 pp): "One may search in vain for a special bibliography of the French Antilles that is at all serious, or for a critical study of any sort, however summary, that

will indicate the sources, or even the repositories where the elements of their history may be looked for" (p. ix). This lack the author endeavors to supply, within the dates mentioned, by a work that forms the sixth volume of the *Mémoires et Documents publiés par la Société de l'École des Chartes*. Barring certain defects, he has produced a book that students of the history of the West Indies as a whole, as well as of the French Antilles alone, will greatly appreciate. M. Dampierre begins his study with a list of the principal bibliographies of Americana, from which for some reason he omits Larned's compilation. This is followed by a series of works annotated and classified under the several heads of descriptive, narrative and documentary sources of the history of the French Antilles, closing with a sketch of the materials in the French archives relative to the same subject. The book is really a bibliography of the history of the West Indies, with special reference to the French Antilles, and the emphasis in the latter respect is less marked than it should be. Indeed it seems strange that the author did not go beyond the year 1664—a date when French colonization in the West Indies had hardly begun. He explains in his introduction why he has adopted his threefold method of general classification, but he does not give any reason for dividing the descriptive sources into works on the geography and cartography of America, on the historical geography of the West Indies and on the products of the islands, while he portions out the narrative sources into those composed by non-French writers, into a critique of the original sources in French and into secondary sources. Nor does his listing of the original authorities and of secondary accounts together lessen the apparent confusion. If M. Dampierre, again, had allotted to the section on the French archives the amount of space that he devotes in his introduction to some superfluous remarks on the methods of classifying historical data in general, he would have made less meagre the portion of his work that affords the information most desired by the student of the colonial history of the French Antilles. The general investigator also might cavil at the superficial character of some of the notes.

The copious references to administrative, statistical, biographical and historical information contained in the *Index to the Proceedings of the State Historical Society of Wisconsin, 1874-1901*, prepared by Mary Elizabeth Haines (Madison, 1904; 399 pp.) will be very useful to those who desire easy access to the fruits of this society's activities. The historical material as such is found chiefly in addresses and papers, rather than in formal documents like those in the Society's *Collections*.

"An intelligent appreciation of the work of Spain as a colonizing

power,'" remarks Professor E. G. Bourne in the preface to his edition of an English translation of a chapter of Roscher's *Kolonien, Kolonialpolitik und Auswanderung (The Spanish Colonial System)*, New York, Henry Holt, 1904; iv, 48 pp.) is "an important object in the study of American history." While no one can properly deny the truth of the remark, a perusal of either the German original or of its English version does not afford the sort of appreciation desired. The reader may have some of his prejudices against the Spanish colonial system dispelled, but his confused notions about its actual operation are not likely to be dissipated. Even the rigid legal aspects of the colonial institutions are not described with any great degree of clearness. Such is bound to be the case so long as writers on this theme, instead of going directly to the almost unexplored archives of Spain, content themselves with legal codes and treatises, books of travel and poorly edited collections of printed documents referring to the sixteenth century, as their sole sources of knowledge about a period of colonization extending over three hundred and twenty-five years. The chief value, indeed, of the present sketch lies in the editor's suggestive notes.

Mr. Henry Gyles Turner's *History of the Colony of Victoria, 1797-1900* (London, Longmans, Green & Company, 1904; 2 vols., xvi, 394 pp.), is written with a fulness that leaves nothing to be desired in point of detail, though one might easily take exception to the distribution of emphasis. The author, according to his preface, does not pretend to be a trained historian; his volumes are not equipped with references or bibliographical apparatus; and they bear the impress of a strong political bias. Half of the space is devoted to the relatively barren period from 1797 to 1854, thus limiting the space given to the history of the colony since it has become a political society of considerable importance. Mr. Turner has unfortunately failed to give us a fair and critical account of the Victorian social experiments that are attracting the interest of the rest of the world, and has confined himself to a political narrative which is but slightly relieved by the chapters on the land question. The legislative experiments of Victoria Mr. Turner characterises as an enfeeblement of the sturdy self-reliance of early days, and state socialism he regards as the "lazy self-abandonment of manly effort, energy and capacity which mark the independent democrat." It also seems to him a matter of regret that "the profoundest student of political economy or history" has no more recognition at the ballot box than the laborer. Interesting as these suggestions may be, they do not answer the questions the intelligent public is asking about Victoria.

By the publication of their *Deutsche Reden* (Boston, 1905, D. C. Heath & Co.) R. Tombo, Sr., and R. Tombo, Jr., have rendered a service to students of history and political science as well as to students of German. They have brought together in a convenient volume, from sources inaccessible in the ordinary college library, a number of speeches in the original tongue by German statesmen and publicists, including Dahlman, Bismarck, Bebel, Bülow and Wilhelm II. The speeches illustrate great political issues and movements in Germany from the Revolution of 1848 to recent colonial questions, and represent various party doctrines from Conservatism to Social Democracy. The volume will be useful to teachers of history in search for "reading" and to students equipping themselves for advanced work.

One of the recent products of the "*Fondation Thiers*" is Louis Cazamian's *Le Roman Social en Angleterre, 1830-1850* (Paris, Société nouvelle d' édition, Librairie Georges Bellais, 1904 ; 575 pp.). This is a study of the reaction against individualism and *laissez faire*, as illustrated and furthered by the writings of Dickens, Disraeli, Mrs. Gaskell and Charles Kingsley. These writers are selected, not because they originated the ideas which they expressed or the tendencies which they represented, but because they reached the widest circle of readers and exercised the greatest influence. With the exception of Disraeli they had no definite programs ; but they made the upper and middle classes realize the misery of the agricultural and industrial laborers ; they aroused sympathy and created "social remorse." They were all conservative in their instincts, and in M. Cazamian's belief their writings did much to prepare the way for remedial legislation and to avoid the peril of social revolution. The book is most readable.

La statistique : ses difficultés, ses procédés, ses résultats, by Professor André Liesse (Paris, Guillaumin et Cie, 1905), is intended, not for the professional statistician, but for "la foule des statisticiens improvisés." The author consequently rigidly excludes all discussion of technique and higher theory, confining his treatise primarily to a presentation of the history of the science, an outline of its scope, its initial difficulties and the more interesting results reached by its use. For the first time an attempt is made to give a popular account of the novel researches of Professor Vilfredo Pareto. The book has a special interest for teachers of statistics in that it reflects the character of the course given by the author at the Conservatoire national des Arts et Métiers.

The admirable *Introduction to the Infinitesimal Calculus*, by Professor Irving Fisher, which has already passed through three American editions and has inspired an Italian work along similar lines, is now

translated into German by N. Pinkus under the title *Kurze Einleitung in die Differential- und Integralrechnung*. The usefulness of this little treatise to scholars desiring to keep in touch with recent statistical and economic theory has been greatly increased, by the author, through fundamental changes in the treatment of the principles of infinitesimals. The translator offers an explanation of the slow progress of the mathematical method in Germany: "Die mangelhafte Verbreitung mathematischer Kenntnisse, die sich z.B. in den offiziellen Statistiken so fühlbar macht, und anderseits die immer noch ausbleibende Stellungnahme gegenüber der mathematischen Schule der Volkswirtschaftslehre sind, nebst manchen anderen, Uebelstände, die der überwiegend und einseitig juristischen Vorbildung der Kameralisten zuzuschreiben sind."

Under the title *President Roosevelt's Railroad Policy* (Boston, Ginn and Co., 1905), the Economic Club of Boston has published a discussion held under its auspices on March 9, 1905. Addresses were delivered by Commissioner Prouty, President Willcox of the Delaware and Hudson, Judge Grosscup and Mr. Frank Parsons. Mr. Prouty's address was a vigorous defense of the Commission in his usual brilliant but extravagant style. In fact, both his address and the reply of President Willcox contained more denunciation than argument. Judge Grosscup offered his plan, which has since become familiar, for an Interstate Commerce Court, and Mr. Parsons proposed the creation of a board of regulation composed of representatives of the interests of railways, labor and the general public. The book has a certain ephemeral value, although the views of all four of the participants may be found more adequately expressed elsewhere.

Mr. Arthur L. Bowley has reprinted, under the title *England's Foreign Trade* (London, Swan Sonnenschein & Co., 1905; x, 165 pp.) an essay written in competition for the Cobden Prize in 1892. The essay in its present form is an excellent brief account of the development of British foreign trade in the nineteenth century. What makes the book especially valuable is its endeavor to correlate movements in the expansion of trade with broader movements in the economic life of the country. The brevity of the author's exposition makes it inevitable that some statements which are not unqualifiedly true should slip into the text. It is not strictly true, for example, that before the Napoleonic wars the British colonies were compelled to export all their produce to England (p. 8). The author's own figures and diagrams fail to show that at times in the Napoleonic wars British trade was reduced almost to *nil* (p. 25). The weakness of the United States in shipping after the war of 1812 was due not so much to inferior wood and dear imports (p. 29) as to dear labor and high profits in manufacturing.

In conflicts of private law, differences of practice in different jurisdictions give rise to singular problems. For example: a court in state A being called upon to decide a given question, finds that, according to the practice obtaining in its own territory, the question is governed by the law of state B; but on investigating the law of state B it finds that the courts of that state, if seized of the same case, would apply the law of state A. The question then arises: Should the court of state A follow its own rule of international private law and apply the territorial law of state B, or should it apply its own territorial law? Continental jurists who accept the latter solution speak of a *renvoi* or *Rückverweisung*. A similar but distinct problem arises when the court of state A starts to apply the law of state B, but finds that the courts of that state, if seized of the same case, would apply the law of state C. The continental jurists who assert that in such a case the court of state A should apply the territorial law of state C speak again, not very happily, of a *renvoi* or, more accurately, of a *Weiterverweisung*. Further complications are possible, but these will suffice for illustration. In his *Notes on the Doctrine of Renvoi in Private International Law* (London, Stevens and Sons, 1904; 124 pp.), John Pawley Bate, reader of international law in the Inns of Court, discusses all these questions from the points of view of legal theory, of expediency, and of actual practice in different countries. His book covers the ground; his presentation of the complex problems treated is a model of lucidity; and his conclusions are characterized by an uncommon degree of common sense.

To O. Q. van Swinderen's *Esquisse du droit pénal actuel dans les Pays-Bas et à l'étranger*, a fifth bulky volume has been added (P. Noordhoff, Groningen, 1903; xvi, 472 pp.). The work is a collection of material from all parts of the world: it includes penal codes and special penal laws, proposed or adopted, with critical notes by the learned editor. All the matter not originally published in French is translated into that language. There is no discernible plan of arrangement, and the transitions from text to comment and from one country to another are indicated only in the table of contents and on the page margins. All the material is of value, and much of it is not elsewhere so easily accessible; but the compilation will not be really useful to students until it is furnished with an alphabetical index of countries and of topics. The chief features of the fifth volume are: a penal code which was submitted to the Norwegian parliament, 1893-96, but has not yet been enacted; the penal code of Appenzell, in force since 1899; the penal code of the Sudan, put in force in 1899 by proclamation of Governor-General Kitchener; a Dutch law of 1901, concerning juvenile

offenders ; and a Dutch law of 1903, which owes its existence to the great railway strike of that year. In connection with these Dutch laws the editor gives the governmental and legislative reports and the debates, including (pp. 460-469) an *aperçu* of the chief European and American statutes concerning intimidation and concerning refusal of public service.

In addition to the works on Japanese family law which seemed to demand formal review because of the eminence of their authors or the exhaustive character of the works themselves, and which are therefore reviewed in this number of the QUARTERLY, a word should be said of two excellent compilations of moderate bulk, which appear to be doctor dissertations—Kojiro Iwasaki's *Das japanische Eherecht* (Rossberg'sche Verlagsbuchhandlung, Leipzig, 1904, vii, 64 pp.) and Saburo Sakamoto's *Das Ehescheidungsrecht Japans* (Mayer & Müller, Berlin, 1903, viii, 107 pp.). Each gives a fairly complete sketch of the development of Japanese marriage and of the innovations introduced by the civil code ; and each contains, as regards the primitive organization of the Japanese house, the same conflicting statements which are found in the more elaborate works of Ikeda and of Tsugaru.

POLITICAL SCIENCE QUARTERLY

SUFFRAGE LIMITATION IN LOUISIANA

WHEN in 1898, after years of ever-increasing agitation, a Convention was called to frame a new constitution for the state of Louisiana, it was clearly understood by everyone that the main object of the gathering was the elimination of the negro from Louisiana politics. So completely did this consideration absorb the attention of the members of the Convention that men belonging to the best element in that body, men whose motives are vouched for by unimpeachable characters, joined with the less scrupulous in the perpetration of political excesses which today are glaringly evident to the most ordinary mind. These excesses appear in the provisions of the present constitution which extend the patronage of the governor and in those which deal with the suffrage. To discuss the patronage system is no part of the object of this article; but it may be well to indicate the reason for its establishment. In making so large a number of offices appointive by the governor, it was the purpose of the Convention to insure the placing of white Democrats in office in those parishes of the state in which the blacks were very largely in the majority and in which it was conceivable that the suffrage provisions might fail to attain the end desired.¹ The extension of the governor's patronage, accordingly, was a measure subsidiary to the restriction of negro suffrage. It is to the suffrage article, the circumstances of its

¹ In St. Charles Parish, for example, the registration of 1896 showed 1671 colored voters, of whom 504 were literate, against 558 white voters, of whom but 291 were literate.

framing and passage, and the motives that actuated the Convention in its adoption, that our attention will be devoted.

It is necessary to recognize, at the very outset, that the colored inhabitants of Louisiana between 1868 and 1898 must be divided into two classes—negroes and negro politicians. We must recognize also two standpoints from which these classes must be viewed, the moral and the political. From a moral standpoint the negro, on the average, was a good citizen; the negro politician, vile. From a political standpoint both were bad, because in politics the negro was dominated by the negro politician. To those who know nothing of this lower type of negro that once flourished all over the South, experience with the white professional politician, a knowledge of his aims, his motives and the extent of his scruples, will give some idea of the moral depths to which members of a previously degraded race would sink, when presented with opportunities and impelled by motives similar to those which combine to create the lowest type of the white professional politician.

It was with the object, then, of eliminating as large a proportion as possible of the negroes, without a like sacrifice of white citizens, that the suffrage article was framed. This task was committed by the Convention to a suffrage committee of twenty-five. Forty-six days intervened between the naming of the committee and the final passage of the article. During these weeks there was a lively discussion of the topic throughout the state. From time to time drafts of a plan would be given out by the committee, only to be modified and remodified again and again, every new project being greeted with a literal storm of comment, most of it in the form of a howl of disapproval, and everybody disapproving for a different reason. In an editorial of March 4, 1898, the New Orleans *Times-Democrat* summed up the situation pretty accurately. After speaking of the numerous plans already proposed (one the day before), strongly condemning them all and predicting that the work would take several weeks, the editorial went on to say:

The chief reason of this failure lies in the fact that the suffrage committee has tried to do too much—has attempted the impossible.

It has aimed at placing every white voter on the poll lists and keeping out nearly every negro, without violating the federal constitution. The result has been to make too many conditions and exceptions and to create too many classes of voters.

To make this comment intelligible, it is necessary to explain briefly just what had been done by the committee up to this time. It may also be well to attempt, at this point, a broad classification of the members of the Convention, on the basis of the motives that prompted them, into three groups—the professional politicians, who were pursuing their own interests; the well-meaning members, who were considering the best interests of the state; and a small group which was seeking the elimination of the negro voter simply because he was a negro. This classification will be reexamined in detail further on, and an attempt will be made to estimate the relative proportion of the three groups in the Convention; but the rough outline just given is necessary for a comprehension of the suffrage article as it appeared when the *Times-Democrat* criticized its many "conditions," "exceptions" and "classes of voters." The article provided that men might vote:

- (1) Under an educational qualification.
- (2) Under a property qualification (\$300).
- (3) Because their wives had property.
- (4) Because their minor children were property-holders.
- (5) Because they were registered in 1868.
- (6) Because, while not registered in 1868, they might have been if they had thought it worth while.
- (7) Because their ancestors were either registered in 1868 or might have been.
- (8) Because of naturalization prior to the adoption of the new constitution.¹

Let us take up these sections one by one, note the circumstances and motives behind the introduction of each section into

¹ In the article as drafted, class 1 appeared in section 3; classes 2, 3 and 4 appeared in section 4; and classes 5, 6, 7 and 8 in section 5. In what follows I take the liberty of referring to each of the classes as if it were provided for in a separate section as numbered in the above tabulated list.

the article, and thus see in the interest of which of the three groups in the Convention it was intended to operate.

(1) The educational qualification, of course, was used as a first general means of disqualifying a large proportion of the negroes. To a few members of the Convention this one discriminating qualification seemed sufficient. The great majority, however, found it inadequate. It did not satisfy the majority even of those who wished to eliminate the negro voter because they thought this for the best interest of the state; for, in view of the large number of illiterate whites, it was thought that the proportion of white voters to colored voters would not be large enough to serve the purpose. It did not satisfy the negro-hater, because it did not eliminate all the negroes. Nothing could have satisfied this small class short of a violation of the federal constitution. It did not satisfy the politician, because it eliminated too many whites, and these of precisely the class that best served his purposes.

(2) Almost everybody, then, favored the introduction of a second qualification, the owning of property to the value of \$300. It is clear, of course, that those who were dissatisfied with the number of negroes entitled to vote under the first qualification remained dissatisfied with the entire article, because the seven additional qualifications could only add to the number of voters; but the property qualification satisfied almost all the rest of that group of members whom we will henceforth designate as the "better element" in the Convention, who feared that the educational qualification had eliminated too large a number of whites. The professional politicians, however, were far from satisfied.

(3) and (4) To the direct property qualification was therefore added, wholly in the interest of the politicians, the provisions in favor of men whose wives or minor children owned property to the value of \$300.

(5) and (6) We have said that almost the entire better element was satisfied with sections 1 and 2, and desired no additional qualifications. There were, however, some in this group who, from motives purely sentimental, were unwilling to see Confederate veterans disfranchised because of illiteracy or

poverty. To satisfy this sentiment, it was further provided that anyone might vote who had registered prior to 1868 or who possessed the necessary qualifications for registering at that time.

(7) This section, which followed close upon 5 and 6, is the famous "grandfather clause." This "clause" consists of three or four unpretentious words in section 5 of the suffrage article as finally passed through the Convention, seemingly as an unimportant addition to what preceded. At first sight, it appears to be only an extension of the sentimental sections, 5 and 6, providing for Confederate veterans, to the descendants of such veterans; but in fact it was largely a device of the politicians to add to the number of illiterate white voters.

(8) This section, which secures the right of voting to all foreigners naturalized prior to the adoption of the constitution, was introduced wholly in the interest of the ward politicians of New Orleans. No provision in the article raised so great a storm of opposition all over the state as did this one. It seemed to have the effect of opening the eyes of a large number of the public, who were satisfied up to this point, to the significant part professional politics was playing in the Convention. It was intended to qualify the large number of illiterate and poor Italians who had settled in the down-town wards of New Orleans, where they were entirely under the control of the ward bosses. The plan was to naturalize the entire batch and rush them to the registration office before the day of the final adoption of the constitution.

This then is the suffrage article as it appeared on March 4. Now arises the question: In whose interest mainly was it framed? The answer will be the same as to the question: What element dominated the Convention? On the basis of motive in eliminating the negro voter, I have divided the Convention into three classes. On the basis of interest subserved in the framing of the article, only two classes, the professional politicians and the better element, seem to have exercised an appreciable influence. All the eight sections serve the purpose of the professional politicians, which was to secure as large an illiterate white vote as possible without admitting the negroes to the suffrage. Of the eight sections only the first two were neces-

sary to serve the purpose of the better element, while the other six worked directly against their object, which was to secure as large a deserving white vote as possible, by reason either of educational or property qualification, and to eliminate as large a proportion of the negro vote as possible. In the light of more recent events, it cannot be questioned that, with the Democrats once in power, these educational and property qualifications, worked as they are today, are adequate to insure a white majority in every parish in the state. The other six, then, are introduced mainly to add to the number of white voters of that class best fitted to serve the interests of the professional politician.

This gives us an indication of the proportion of the two elements in the Convention. I had hoped, at first, to be able to make an actual count of the members of the Convention, taking up each member individually and determining from personal study the class to which he should be assigned, and thus to give the size of these two classes in definite figures. After considerable work along these lines, I was compelled to abandon this hope. Any figures given could have been attacked by anyone making a similar study, and neither I nor he would have been able to maintain the grounds on which judgments in individual cases were based. The Convention is too recent an event. Almost all the members are alive today. The discussion of a large number of individual cases, which would be necessary in giving the grounds on which definite figures were based, would inevitably assume too personal a character. On the basis, however, of the knowledge gained by a partial investigation of the character above indicated,¹ together with a tolerably close study of the proceedings, I do not hesitate to assert that at least 60 per cent of the Convention worked in the interests of professional politicians—with what success, I have already shown. How far the suffrage article failed to satisfy the better element

¹ Of 134 members I obtained information regarding 69, leaving 65 doubtful. Of the 69, 50 were politicians and 19 not. Knowing that I should be more apt to learn of the politicians by reputation than of the non-politicians, I gave the latter a larger percentage of the doubtful, 35 to 30. This brings the total to 85 politicians and 49 non-politicians; in percentage, 63 to 37.

and the intelligence of the state outside the Convention, may be gathered from some of the bitter editorials published in representative journals. Some of these can be found in the New Orleans *Picayune* of March 13. The New Orleans *Times-Democrat* has this comment: "Here we have eight different classes of voters, with every possible trick and combination utilized save the understanding clause." A few days later, when two other classes had been added (one of them very desirable, *viz.* the woman property voter on certain questions), the same journal said:

In the other states of the Union, all voters hold their electoral franchise by the same law and title, and under the same conditions. It remains to the suffrage committee of the Constitutional Convention to create some more classes of voters, each enjoying the franchise under a different title, under different conditions, and because of different qualifications.

- (1) The educated voter, that is, the voter who can read and write. He is the only one in the entire batch, except the woman voter, who is not illiterate.
- (2) The property voter, illiterate, but worth \$300.
- (3) The squaw voter (wife worth \$300).
- (4) The papoose voter (children worth \$300).
- (5) The 1868 voter.
- (6) The could-have-been voter—the fellow who might have voted in 1868 but did not think it worth while.
- (7) The hereditary voter.
- (8) The privileged "Dago" voter.
- (9) The woman property voter (on certain questions only).
- (10) The woman proxy voter.

I have quoted the above passage from the *Times-Democrat*—this journal and the *Picayune* being the largest, most reputable and most influential in the state—to bring out more clearly the fact that the suffrage article, in the slightly modified form in which it was finally passed through the Convention, was the work of professional politicians, and that only two sections were generally favored by the better element in the Convention and in the state.

The question immediately arises: How then is the support of

this article by the *Picayune* to be explained without classing that journal outside the better element? The explanation is simple. I have placed the proportion of politicians in the Convention at 60 per cent and the better element at 40 per cent. Now when the vote came to be taken on section 5 of the final plan, which embraced sections 5, 6, 7 and 8 of the plan as I have formulated it, we find the section carried in the Convention by a vote of 85 to 45. If my estimate of the strength of the different groups is correct, it appears that some five per cent of the better element voted with the politicians. This is just what happened. Now the attitude of the *Picayune* was exactly that of this small proportion of the better element. That they were conscientious in their vote, I am led to believe by my knowledge of the men themselves. Their sentiments were reflected in the editorials of the *Picayune*. They held that, while the position of the majority of the better element was sound as far as applied to New Orleans, a larger enfranchisement of the whites than was provided for in the educational and property qualifications was necessary to insure a white majority in many of the country parishes. There was also a large element in the population of Louisiana known as the French Acadians. They were among the oldest inhabitants of the state, and they had fought bravely in the Civil war; but the percentage of poverty and illiteracy among them was extremely high. The minority of the better element deemed it unjust to deprive these citizens of the ballot.

This explains the support of the *Picayune* and of the five per cent of the better element who voted with the politicians. But the majority of this element, represented by the *Times-Democrat* and similar journals all over the state, while not attempting to conceal the fact that they wanted the negro disfranchised, did not desire any such wholesale enfranchisement of illiterate whites as is the object and effect of section 5.

This leads us to a consideration of the attitude of the Convention toward the negro. Here again we have to analyze the position of our three classes, the professional politicians, the better element, and the very small class drawn from both, the natural negro-haters.

We have seen that the politicians were in the majority. Their

attitude toward the negro was wholly determined by selfish political interests. In the negro they saw only a possible voter whom they could not utilize on account of his traditional adherence to the Republican party. Though in a minority in the state, this party, with the negro vote, was large enough to prove a menace to the professional Democrat, that type of Democrat who in Pennsylvania would be a Republican. Only two years before the Convention, 1896, and again eight years before, in 1888, the ward bosses of New Orleans had been put out of power by a reform movement which, by fusion with the Republicans, had utilized this vote. No feeling toward the negro, as a negro, constituted any part of the motives of the professional politicians. If the majority of the negroes in the state had voted the Democratic ticket, the politicians would have fought to the last ditch against any attempt to disfranchise the negro.

The better element in the Convention wanted the negro disfranchised because in him they saw an aid rather than a hindrance to the professional Democrats. This element was trying to secure good government for the state, such government as they could not hope to get under the rule of the professional Democratic politicians. They saw that the only means of attaining this end was by white opposition to the professionals. Such opposition was impossible on account of the bugbear of negro domination set up by the politicians at the least suggestion of a split in the white Democratic ranks. They well knew the potency of that cry to hold the white Democrats within their ranks. Only in New Orleans, where the percentage of intelligence was higher and the negro vote smaller, did this cry fail to have its effect. There, reform movements could win. A reform movement embracing the entire state was seen to be an impossibility so long as the negro remained a factor in politics. The better element, then, wanted the negro disfranchised in order that a white opposition, if not open, at least potential, might serve as a check to the professional politicians throughout the state, with even a possibility of their overthrow and the substitution of a better class of political leaders.

Perhaps ten per cent of the Convention—after a close study of its personnel and proceedings, I put this as the highest pos-

sible estimate—were opposed to the negro simply because he was a negro. Their feelings toward the negro were the result of temperament, intensified by education and tradition. This was such a class as would inevitably arise in any society placed in similar circumstances and inheriting similar traditions. Perhaps the greatest injustice done to Southern legislators by their Northern critics lies in the latters' overestimation of this class in their analysis of the motives of negro disfranchisement.

It is not necessary to go further into the subsequent proceedings of the Convention in adoption of the suffrage article. Its formal presentation was followed by sixteen days of debate and reconsideration. During the first three days the discussion was particularly hot and, at times, acrimonious. The woman proxy voter, the squaw voter and the papoose voter were eliminated. The naturalization provision was changed, fixing the time at January, 1898, instead of the adoption of the constitution; and a poll tax requirement was added. We need not go into the warm discussion of the poll tax that occupied a good part of the Convention's time, because the lines that divided the Convention on this subject were differently drawn from those that marked off the opposing parties in their attitude toward the other provisions.

This review of the passage of the suffrage article in the Constitutional Convention of 1898 brings out clearly several points that it may be well to emphasize in closing. In the first place, it corrects the erroneous notion that exists in many minds that the disfranchisement of the negro in the South is the result of a prejudice against the negro as a negro. How far this may be true in other states, I am not prepared to say; but my study of motives in the Constitutional Convention of Louisiana has convinced me that in that body ten per cent is a large estimate of the class who were controlled by this motive.

Another thing that needs to be borne in mind is that only the first two qualifications, with the possible exception of that which was to operate to the benefit of Confederate veterans, were in conformity with the ideas of the majority of the better element in the Convention, the others being devices of the politicians. It must also be borne in mind that none of the sections added in

the interest of politicians disfranchises anybody; they enfranchise a few negroes and many whites. Important in this connection is the fact that the so-called "grandfather clause" is only one of the devices which do not disfranchise anyone. If a negro can satisfy the commissioners that he possesses the requisite educational qualification, or can prove that he owns \$300 in property, or that he was a foreigner naturalized prior to the year 1898, he can vote in Louisiana regardless of the status of his ancestors. Moreover, if he can show that one of his ancestors was entitled to the franchise in Louisiana prior to 1868—as some of them have done, the ancestor having been a white man—he cannot be denied a franchise today.¹ If anyone chooses to regard this distinction between disfranchising some persons and enfranchising other persons as a distinction without a difference, he is at liberty to do so, but it is well to bear the distinction in mind.

At any rate, it is only fair to the better element of the white citizens of Louisiana to recognise their true position in regard to section 5 of the suffrage article, the circumstances and motives that gave rise to it, who favored it and in whose interest it was meant to operate. It must also be borne in mind that the larger part of this element in Louisiana would like to see it and kindred clauses stricken from the Constitution, because the repeal would not add a single colored voter to the registration list and would eliminate part of the undesirable illiterate vote. The percentage of white literacy in Louisiana is increasing fast, and is high enough all over the state to render the votes of illiterate whites, if they were ever necessary, now unnecessary to insure white supremacy in Louisiana politics.

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¹ Legitimacy constitutes no part of the requirement, since natural children are recognized in the Louisiana law.

SUPPLEMENTARY NOTE.—The following statistics, taken from the Louisiana official reports published by the secretary of state, illustrate conditions prior to the adoption of the present constitution and the effect of its provisions regarding the suffrage.

I. VOTERS REGISTERED IN 1896 AND IN 1900: COLOR

	<i>White</i>	<i>Colored</i>
1896	152,267	127,263
1900	125,437	5,354

II. VOTERS REGISTERED IN 1896: LITERATES AND ILLITERATES

	<i>White</i>	<i>Colored</i>
Literate	123,960	31,587
Illiterate	28,307	95,876

III. VOTERS REGISTERED IN 1900: QUALIFICATION

	<i>White</i>	<i>Colored</i>
Under educational qualification	86,157	4,327
Under property qualification.....	10,793	916
Under section 5	28,487	111

The figures for whites registered under section 5 are greatly swelled from the fact that many white politicians, educated and property holders, registered under this section to give it an air of respectability for those who could register under no other. The figures in Table II show that if an educational qualification alone had been provided, 28,307 whites and 95,876 blacks would have been disfranchised, leaving the whites a majority of 92,373 in the state. Below are given the figures for those parishes where the percentage of white illiteracy was highest:

IV. VOTERS REGISTERED IN ACADIA PARISH IN 1896

	<i>White</i>	<i>Colored</i>
Literate	1,594	96
Illiterate	1,163	545

V. VOTERS REGISTERED IN ASSUMPTION PARISH IN 1896

	<i>White</i>	<i>Colored</i>
Literate	1,385	606
Illiterate	1,141	1,861

VI. VOTERS REGISTERED IN ST. CHARLES PARISH IN 1896

	<i>White</i>	<i>Colored</i>
Literate	291	504
Illiterate	267	1,167

VII. VOTERS REGISTERED IN WEST BATON ROUGE PARISH IN 1896

	<i>White</i>	<i>Colored</i>
Literate	486	430
Illiterate	282	1,443

In the two last-named parishes, the negroes were in the majority. St. Charles was the only parish in the state where the literate negroes were in the majority. In West Baton Rouge the educational qualification alone would have given the whites a majority of 38. That is, 20 white literate Republicans in this parish would place the negroes in the ascendancy. The following tables show the result in these parishes four years later, the constitution of 1898 having been put into operation in the meantime:

VIII. VOTERS REGISTERED IN ACADIA PARISH IN 1900

	<i>White</i>	<i>Colored</i>
Under educational qualification	1,319	6
Under property qualification.....	511	5
Under section 5	314	0
Total	2,144	11

IX. VOTERS REGISTERED IN ASSUMPTION PARISH IN 1900

	<i>White</i>	<i>Colored</i>
Under educational qualification	510	132
Under property qualification.....	42	25
Under section 5	1,152	0
Total	1,742	157

X. VOTERS REGISTERED IN ST. CHARLES PARISH IN 1900

	<i>White</i>	<i>Colored</i>
Under educational qualification	350	13
Under property qualification.....	16	1
Under section 5	700	0
Total	1,066	14

XI. VOTERS REGISTERED IN WEST BATON ROUGE PARISH IN 1900

	<i>White</i>	<i>Colored</i>
Under educational qualification	365	3
Under property qualification.....	89	9
Under section 5	63	0
Total	517	12

A comparison of Tables IV-VII with Tables VIII-XI throws much light on the working of the new constitution.

	<i>Literate Negroes, 1896</i>	<i>Negroes registered under educational qualification, 1900</i>
Acadia.....	96	6
Assumption.....	606	132
St. Charles	504	13
West Baton Rouge.....	430	3
Total	1,636	154

That is, 1482 negroes in these parishes, classed as literate in 1896 and who could have registered under the educational qualification, failed to do so, only 154 taking advantage of their literacy. The fact is that most of them had a vague idea that the recent constitution had disfranchised them, and that they could not vote because they were negroes. In addition to this, the failure to pay the poll tax provided for in the new constitution disfranchised a large number. The professional politicians paid those of a large number of the illiterate whites whose votes they controlled. For the entire state the figures are: 31,587 negroes registered as literate in 1896, and 4,327 registered under the educational qualification of 1900, leaving a difference of 27,260.

J. L. W. W.

CANADIANS IN THE UNITED STATES

TWO centuries ago, when the United States was not yet a dream of the future, the pioneers of the American West, the French Canadian *coureurs de bois*, opened up the western trade routes from Hudson's Bay to Louisiana and laid the first foundations of a line of great cities. Among these may be named Detroit, Sault Ste Marie, Chicago, St. Paul, Pittsburgh and New Orleans. That chapter is, however, long since closed except for the faint traces of race occasionally still noticeable on the Mississippi. As regards population, the debt was more than repaid after the peace of 1783, when Loyalists founded Upper Canada and New Brunswick and settled the eastern townships of Quebec. For the subject in hand we come down to much nearer years, of which we have more or less exact information, and run our eye not further back than a few years before British North America became the Dominion of Canada.

During the half century ending in 1900, then, one finds that at least one million eight hundred thousand Canadians moved across the border into the United States. This exodus is one of the notable facts in Canada's history. For a time it dismayed a large section of the Canadian people, bringing them almost to despair of their political future. But the country is now attracting population alike from Europe and the United States. Its progress is one of the important events in the recent history of the new world. Accordingly it will be of interest to look back and review briefly the great Canadian exodus, the localities the emigrants have selected for their new homes, the occupations they are following, and their intermarriage with citizens of the United States.

The whole topic of the movement of populations is, indeed, instructive. It tells the life-story of a people. It is history in a nut-shell, an epitome of conditions. Migrations reflect in a measure the course of affairs at home and in some respects rela-

tions between countries as well. Occasioned at times by mistaken notions, by imperfect knowledge, they may well be, but they are rarely wholly blind; and whatever may be their causes, they offer much to interest and to instruct. Those that have taken place in modern times appear to differ from those of centuries ago. In ancient times whole peoples, entire tribes, pushed and pressed from east to west in search of fresh lands. It was in this way that nationalities in Europe were formed. Later on, in the middle ages, when life had become more settled, particular classes only wandered widely: knights on crusades or on chivalrous errands, journeymen craftsmen, jugglers, minstrels and merchants. At present, if there be any rule, it is that, irrespective of class, migrations have come to be a matter of private concern. We see individuals and single families changing their homes. A great variety of motives are operative; but through them all runs one common characteristic—the desire to secure a better market for abilities. The nation of origin loses a certain amount of energy which would have been spent in developing its resources; the individual gains what he regards as a better chance.

Levasseur, the French geographer and economist, has attempted to formulate a law of migration. He points out that, as in the world of matter, the bigger the mass the greater the force of attraction. This is only another way of saying that people flock to the cities and generally seek out the largest market for their labor. This law, if law it may be called, must be stated guardedly, since a densely populated country, for example, may more often repel than attract. It will suffice perhaps to say simply that migration is the attempt to adjust population to opportunity—a process of adaptation, a phase of industrialism.

Geographical influences on shifting of population must not be lost sight of. Climate counts. Though the point has not yet been proven, there is much to support the view that, apart from economic considerations, Northern peoples tend to be more mobile than Southern. Not that winter drives the Northerner into exile. If one enjoys a fair measure of health, few delights are keener than the feelings of exhilaration and the sports of a northern, let us say of an average Canadian winter. The ting-

ling climate and the stimulating procession of the seasons spur one into habits of vigorous action. As for Canadians, travellers tell us they find a sprinkling on every continent. In England and Wales, for instance, there are nearly 19,000; in Australia over 3,000; nearly 1,500 in New Zealand; and in Alaska 2,000 more.

The migration of Canadians to the more developed market of the United States is of two kinds, temporary and permanent, the one shading imperceptibly into the other. Temporary migration fell away sharply with the coming of settled industrial conditions in the republic; but in spite of "alien labor" laws they are still important along the border and in such centers as New York, Boston, Pittsburg, Chicago and San Francisco.

In 1900 there were 10,356,644 foreigners who had become domiciled in the United States. Of these 1,181,255, or 11.4 per cent, were Canadian-born. Out of this number 785,958 were "English" and 395,297 were French Canadians. By "Canadian" the census always means "born either in Canada or Newfoundland" although Newfoundland is not yet part of the Dominion. In estimating the number of Canadians we must take it into account that many British-born Canadians, after living in Canada for a number of years, have moved south and have been enumerated there as British, not as Canadians. One may hazard the estimate that their number is one-eighth of that of the Canadian-born, English-speaking immigrants, *i.e.* 100,000. With 450,000 children born in the United States of these Canadian parents the total thus becomes 1,731,000; 995,000 (57 per cent) being "English" and 736,000 (43 per cent) French Canadians.¹ There is still another group of 813,350 who have one Canadian-born parent. But in fairness these cannot be called Canadians and may therefore be left out of count. An allowance, however, will have to be made for the many other Canadians by birth, who, report has it, prefer to report themselves as British and are so enumerated. They bring the grand total up to at least 1,800,000 Canadians at present living in the

¹To allow a contrast with these percentages it is to be noted that in Canada the French Canadians form 30.7 per cent of the total population.

United States, that is one-third of the population of the Dominion as it stood in 1901.¹

But how may one estimate the number of those who have emigrated to the United States during the last fifty years? The census gives a return showing the decennial increase in the number of foreigners. We may assume the average age of the Canadian immigrants to be twenty-five years. Using then an ordinary mortality table, we may calculate the number of those from each decennial increase who should be living to-day:

DECade	CANADIAN EMIGRANTS TO U. S., ACCORDING TO U. S. CENSUS	ALIVE 1900 ACCORDING TO MORTALITY TABLE
1850-60	102,200	41,786
1860-70	243,000	153,710
1870-80	224,000	175,054
1880-90	264,000	233,426
1890-00	200,000	193,132
	—	—
	1,033,000	797,108

These figures mean that an immigration of 1,033,000 persons yields a present population of 797,108. The problem is to know how many are necessary to produce the present population of 1,800,000 less their 450,000 children. This number we find to be 1,750,000. Adding the 450,000 children the grand total loss of population to Canada is found to be 2,200,000 for the half century, one and three-quarters or more millions being lost directly, the balance through immediate natural increase. Of the 2,200,000 the "English" compose approximately 1,200,000, the French approximately 1,000,000.

Every adult costs his native country at least \$1000 to nourish and educate. So, after making allowance for the 100,000 of British birth and education, Canada may be said to have invested in the American Republic living capital assessable at \$1,-650,000,000—a sufficiently severe drain on a young nation! This enormous loss Canada has withstood, although at the same time it has been steadily carrying on extensive public works. It makes one marvel at the recuperative power of young, fertile countries. The loss amounts to half Mr. Giffen's estimate of the

¹ If we include those with one Canadian parent the sum total would be upwards of 2,600,000, one million of these being French, the balance "English" Canadians.

crippling burden placed on France by the Franco-Prussian war. There is a contra account, of course, for United States emigration into Canada. The Canadian census of 1901 places their number at 127,899. At \$1000 per head this means \$128,000,-000, or, with an additional allowance of one-third for the years back to 1850, \$170,000,000, which is about 10 per cent of Canada's loss.

Canadian emigration to the United States has been remarkably constant. The United States census records periodical increases for the previous ten years of 102,259 in 1860; of 243,-494 in 1870; of 223,693 in 1880; of 263,781 in 1890, and of 200,317 in 1900. The largest exodus from Canada seems to have occurred therefore during the ten years 1880-90, or perhaps more precisely 1875-85. The steady flow has resulted in Canadians constituting a growing percentage of the whole body of foreigners in the United States. In 1850 they formed 6.6 per cent of all foreigners; in 1860, 6 per cent; in 1870, 8.9 per cent; in 1880, 10.7 per cent; in 1890, 10.6 per cent; and in 1900, 11.4 per cent. The increase, as the following table shows, is paralleled by the Scandinavians alone. Between 1850 and 1900 the percentage of Germans amongst the foreign-born fell slightly—from 26 to 25.8 per cent; of Irish, from 42.8 to 15.6 per cent; of British, from 16.8 to 11.3 per cent; but the percentage of Scandinavians jumped from .9 to 10.3 per cent; and that of Canadians from 6.06 to 11.04 per cent. The relative increase of Canadians, even between 1890 and 1900, is marked, as the following table shows:

INCREASE OF CANADIANS IN THE UNITED STATES, 1890-1900

	1890	1900	NUMBER	PER CENT
English Canadians . . .	678,442	785,958	107,516	15.8
French Canadians . . .	302,496	395,297	92,801	30.7
Total	980,938	1,181,255	200,317	20.4
Swedes (next highest) .	478,041	573,040	94,999	19.7
Foreigners generally .	9,249,547	10,356,644	1,107,097	12.0

The United States immigration statistics give only 3,064 Canadians as settling in that country between 1891-1900; but the census returns show these figures to be entirely astray. In fact the insuperable difficulties in the way of counting people who enter the States by way of Canada make the United States

annual returns of Canadian immigrants unreliable, and of late years the attempt to compile them has been abandoned. The official immigration figures may be worth giving, however, for purpose of comparison with other nationalities.

IMMIGRANTS TO THE UNITED STATES

	1891-1900	PER CENT	1891-1900	PER CENT	1881-1890	PER CENT
Aggregate	19,115,221	100	3,687,564	100	5,246,613	100
Canada & Newf'l'd .	1,049,939	.	3,064	.1	392,802	7.5
Ireland	3,871,253	.	390,179	10.6	655,482	12.5
Great Britain	3,024,222	.	270,019	7.3	807,357	15.4
Germany	5,009,280	.	505,152	13.7	1,452,970	27.7
	1871-1880	PER CENT	1861-1870	PER CENT	1851-1860	PER CENT
Aggregate	2,812,191	100	2,314,824	100	2,598,214	100
Canada & Newf'l'd .	383,269	13.6	153,871	6.7	59,309	2.3
Ireland	436,871	15.5	435,778	18.8	914,119	35.2
Great Britain	548,043	19.5	606,896	26.2	423,974	16.3
Germany	718,182	25.6	787,468	34.0	851,667	36.6

General Distribution of the Canadians

And now as to the localities chosen by Canadians for their new home. Of the "English" Canadians 88 per cent are divided equally between the North Atlantic and the North Central states, 10 per cent are in the West, 2 per cent in the South. The North Atlantic section will include a large number of "Blue Noses" (Nova Scotians and Brunswickers); though, as Mark Twain hints with his "wise old Nova Scotian owl" in *Tramp Abroad*, many a Nova Scotian miner is to be found in the mining camps of the West. Of the French Canadians 77 per cent live along the Atlantic, nearly three-fourths of these being found in seven cities, Manchester, N. H., Fall River, Holyoke, Lowell, New Bedford, Worcester and Lawrence, Mass. Upwards of 20 per cent are in the North Central regions, less than 3 per cent in the West and less than 1 per cent in the South. The small percentage of Canadians in the Southern states (2 per cent of the "English," 1 per cent of the French), hardly does justice to the cordiality between Southerners and Canadians which is dated from the time of the Civil war. The two maps that accompany this article reproduce from the census atlas the general distribution, numbers or density being indicated by the depth of shading.

DIVISION OR STATE	"ENGLISH" CANADIANS	FRENCH CANADIANS	TOTAL
NORTH ATLANTIC STATES	345,342	305,160	650,502
Massachusetts	158,753	134,416	293,169
New York	90,336	27,199	117,535
Maine	36,169	30,908	67,077
Vermont	10,616	14,924	25,540
Pennsylvania	13,292	1,468	14,760
SOUTH ATLANTIC STATES	6,284	636	6,920
Florida	1,014	88	1,102
Maryland	1,143	87	1,230
Virginia	1,026	104	1,130
NORTH CENTRAL STATES	345,304	77,019	422,323
Michigan	151,915	32,483	184,398
Illinois	41,466	9,129	50,595
Ohio	19,864	2,903	22,767
North Dakota	25,004	3,162	28,166
South Dakota	5,906	1,138	7,044
Minnesota	35,515	12,063	47,578
Wisconsin	23,860	10,091	33,951
Kansas	7,053	1,485	8,538
SOUTH CENTRAL STATES	8,802	1,460	10,262
Texas	2,549	400	2,949
Oklahoma	1,248	179	1,427
Kentucky	1,072	136	1,208
Louisiana	781	253	1,034
Arkansas	932	161	1,093
WESTERN STATES	79,089	10,791	89,800
California	27,408	2,410	29,818
Washington	18,385	1,899	20,284
Montana	10,310	3,516	13,826
Colorado	8,837	960	9,797
Oregon	6,634	874	7,508
Idaho	2,528	395	2,923
Utah	1,203	128	1,331

It is to be remembered that, if regard is had to British Canadians and children of immigrant Canadians, the numbers in each of these divisions may probably be safely increased one-half.

Canadians in United States Cities in 1900

It is usually taken for granted that most Canadians go to the great commercial centers. The reverse is the case. Over half are to be found in the country and in the smaller towns. Only 40 per cent of the "English" and 37.7 per cent of the French



DENSITY OF THE DISTRIBUTION OF THE NATIVES OF CANADA AND NEWFOUNDLAND, 1880

(A dot on each line indicates an average population of less than a square mile and therefore demarcates the dense lands of the United States.)



2. PROPORTION OF THE NATIVES OF CANADA AND NEWFOUNDLAND TO THE AGGREGATE POPULATION: 1890.





Canadians live in the 160 largest cities, that is, in cities with 25,000 or more population. I give here a selection of cities that have the largest Canadian constituencies. But, as already pointed out, the British Canadian and pure Canadian stock would probably raise the number in each city fifty per cent.

CITY OF RESIDENCE, 1900	ENGLISH CANADIANS		FRENCH CANADIANS		TOTAL NUMBER OF CANADIANS	ESTIMATED NUMBER OF PURE CANADIAN STOCK
	NUMBER	PER CENT OF FARMERS	NUMBER	PER CENT OF FARMERS		
Boston	47,374	24	2,908	1.5	50,282	65,000
Cambridge	9,613	31.5	1,483	4.9	11,096	16,000
Chicago	29,472	5	5,307	.9	34,779	55,000
Detroit	25,403	26.3	3,541	3.7	28,944	45,000
Buffalo	16,509	15.8	733	.7	17,242	30,000
New York	19,399	1.5	2,527	.2	21,926	38,000
Jersey City	907	1.6	134	.2	1,041	1,500
Newark	802	1.1	160	.2	962	1,300
Paterson	385	1.0	174	.5	559	800
Cleveland	7,819	6.3	772	.6	8,611	13,000
Philadelphia	2,989	1.0	294	.1	3,283	5,000
Cincinnati	928	1.6	103	.2	1,031	1,500
Rochester	7,746	19.0	553	1.4	8,299	12,000
Lowell	4,485	11.0	14,674	35.8	19,159	30,000
Worcester	3,163	8.4	5,204	13.8	8,367	12,000
Fall River	2,329	4.6	20,172	40.3	22,501	33,000
Providence	3,882	6.9	3,850	6.9	7,732	11,000
New Haven	754	2.4	416	1.3	1,170	1,700
Minneapolis	5,037	9.2	1,706	2.8	7,343	11,000
St. Paul	3,557	7.6	1,015	2.2	4,572	6,800
Milwaukee	1,687	1.9	217	.2	1,904	2,800
St. Louis	2,151	1.9	339	.3	2,490	3,600
Pittsburg	994	1.2	79	.1	1,073	1,500
Washington, D. C. .	809	4.0	97	.5	906	1,300
New Orleans	310	1.0	85	.3	385	600
Louisville	365	1.7	45	.2	410	600
San Francisco	4,770	4.1	429	.4	5,199	8,000

The proportion of farmers among the Canadians in the United States is shown by the following figures. The census accounts for 367,170 Canadian families, 207,580 of these being "English" and 159,590 French. 24 per cent of the "English," and 16 per cent of the French families live in farm houses. That such a large percentage lead a rural life is a remarkable fact when one considers that Canada is itself so largely an agricul-

tural country. The history of this interesting exodus, indeed, remains yet to be written. On the whole, if we contrast the two Canadian races, there are proportionately more French Canadians in the smaller towns, proportionately more "English" Canadians carrying on farming or living in the large cities.

The Occupations of Canadians

A comparison of the occupations of Canadians in the United States and in Canada, respectively, brings home the significance of the migration and sets it in a new light. The census takes note of 819,264 Canadians ten years of age or over. 40 per cent of these are engaged in manufacturing; 30 per cent in personal service; between 17 and 18 per cent in trade and transportation; about the same percentage in agriculture; and somewhat over 4 per cent in professions. The percentage in the professions is approximately the same as that of the native-born white population in the United States. The large numbers as compared with the number left behind following the same occupations, as shown in the table below, throw light on conditions in Canada; for example, the number of expatriated Canadian teachers and college professors, lawyers and clergymen. Curious is the number of Canadians as government officials, soldiers and marines, as is also the great number of Canadian girls of a superior class who have gone to the United States as nurses. Rumor has it that many of these are enumerated as Americans "from northern New York"—for which a wag might say there is geographically a show of reason.

Of the 300,000 Canadians engaged in business or following professional pursuits in the United States many hold prominent posts. Indeed one hears at times the statement that the "English" Canadians enjoy an exceptionally high reputation. Some reasons occur why this should be the case, and, without suggesting comparison, why the average "English" Canadian in the United States is a good type. (1) Those who go to seek their fortune in a foreign country are presumably hardy and ambitious, the result of a process of natural selection. (2) They have been bred under invigorating climatic influences. (3) They find a wider market for their abilities. (4) They are in

1 PERSONS TEN YEARS OF AGE OR OVER WITH ONE PARENT OR WITH BOTH PARENTS CANADIAN BORN

INDUSTRIAL BRANCH	"English" CANADIANS		French CANADIANS		TOTAL	PER CENT	NUMBER OF IMMIGRANTS ENGAGED IN INDUSTRY IN CANADA, 1901	NUMBER HAVING SAME OCCUPATION IN CANADA IN 1891*	NUMBER HAVING SAME OCCUPATION IN INDIA IN 1891*
	MALES	FEMALES	MALES	FEMALES					
AGRICULTURE	97,645	2,306	44,267	793	145,011	17.7	790,210	12,319	40,7
Lumbermen and Raftsmen	5,223	5	2,842	2	8,072	...	...	...	...
MANUFACTURING AND MECHANICAL ARTS	114,518	30,160	130,381	58,749	333,814	40.7	320,001	369,595	15,168
Miners and Quarrymen	5,090	1	2,521	1	77,613	...	...	...	...
Fishermen and Oystermen	2,761	14	924	3	3,702	...	...	...	...
Boot and Shoemakers and Repairers	4,757	2,055	9,076	2,643	18,561	...	15,816	18,941	13,338
Saw and Planing-Mill Employees	4,489	6	4,904	9	9,408	...	53,042	690	2,817
Paper and Pulp Mill Operatives	1,378	261	2,272	581	4,493	...	...	...	...
Printers, Lithographers and Pressmen	3,348	648	996	144	5,136	...	...	...	...
Textile Trades	4,270	5,101	43,378	41,509	94,258	...	...	...	...
Cotton Mill Operatives	1,511	1,002	39,147	29,331	33,191	...	6,953	8,502	...
Hosiery and Knitting-Mill Operatives	259	884	1,148	2,416	4,707	...	946	2,162	...
Silk Mill Operatives	109	322	403	844	1,678	...	121	322	...
Woolen Mill Operatives	1,051	1,015	4,693	3,440	10,199	...	4,241	7,182	...
Carpet Factory Operatives	73	83	145	111	412	...	...	...	915
Bleachery and Dye Works	225	30	860	65	1,180	...	...	...	...
Other Textile Branches	1,042	1,105	5,982	5,302	13,491	...	...	...	...
DOMESTIC AND PERSONAL SERVICE	56,912	41,461	49,549	12,970	160,892	19.6	246,183	2,157	...
Nurses and Mid-Wives	479	5,003	57	579	6,118	...	...	...	...
Soldiers, Sailors and Marines (U. S.)	2,902	.....	802	.....	3,714	...	...	...	...
Hotel-Keepers	923	149	520	50	1,042	...	...	...	...
Saloon-Keepers	993	13	1,134	12	2,152	...	6,818	...	...

* The Census does not give figures on those having both parents Canadian born. Compiled. They will of course show considerable change.

PERSONS TEN YEARS OF AGE OR OVER WITH ONE PARENT OR WITH BOTH PARENTS CANADIAN BORN—Concluded

INDUSTRIAL BRANCH	"English" Canadians		French Canadians		TOTAL	PER CENT
	MALES	FEMALES	MALES	FEMALES		
Bartenders.....	1,316	8	1,203	6	2,533	....
Restaurant-Keepers.....	532	116	239	38	925	....
TRADE AND TRANSPORTATION	87,091	15,972	36,711	4,233	144,607	17.6
Bankers and Brokers.....	990	6	265	1	1,262	....
Officials of Banks and Companies.....	1,604	32	256	6	1,898	....
Boatmen and Sailors.....	2,890	4	946	....	3,840	....
Wholesale Merchants.....	680	4	216	....	900	....
Steam Railways Employees.....	10,271	32	5,443	7	15,753	....
Progressions.....	16,735	12,353	3,614	2,238	34,940	4.2
Teachers and College Professors.....	1,784	9,210	295	1,641	12,930	....
Music Teachers.....	610	1,573	282	355	2,870	....
Literary and Scientific People.....	289	162	58	19	528	....
Artists and Teachers of Art.....	272	341	64	47	724	....
Actors and Professional Showmen.....	733	251	224	59	1,258	....
Government Officials.....	1,243	177	267	33	1,724	....
Physicians and Surgeons.....	2,880	246	725	43	3,893	....
Lawyers.....	1,630	27	233	1	1,891	....
Dentists.....	1,038	30	141	5	1,214	....
Journalists.....	606	74	95	6	781	....
Civil Engineers and Surveyors.....	1,010	2	151	....	1,191	....
Electricians.....	1,621	10	364	5	2,000	....
Clergymen.....	1,829	126	497	12	2,464	....
Architects, Designers and Draftsmen.....	676	27	147	9	858	84.3

1901
NUMBER OF EMPLOYEES
EMPLOYED IN INDUSTRIES
IN CANADA IN 1895

1895
NUMBER HAVING SAME
OCCUPATION IN CANADA

a country where traditionally greater responsibility is placed on young shoulders than has been usual in Canada down to recent years. (5) Race and language are in their favor, especially in the West. (6) They have had the benefits of a good common school and, in special cases, of a thorough collegiate education. (7) Coming from a more agricultural country they may be expected to be healthy and thrifty. (8) In old Canada religious influences are strong. (9) Finally it is just possible that the comparative absence down to quite recently of the marked influence of corporate organization of business in Canada has instilled into the Canadian youth a lively sense of personal responsibility.

Who's Who in America mentions 245 Canadians. With the allowance already made of one-eighth for those born in Great Britain but brought up in, and therefore rightly to be credited to Canada, the number of Canadians becomes 276 or 2.3 for every 10,000 Canadians in the United States. With this may be compared the British rate per 10,000 of 2.2, that of 2.1 for the Dutch, that of .5 for Swedes and that of .9 for native Americans (black and white) or 1.9 for native white Americans. The record made by the Canadians seems particularly notable when it is remembered that nearly 60 per cent (58.4 per cent of the French Canadians and 56.5 per cent of the "English" Canadians) are under 21 years of age as against 10 per cent for all foreign-born and 52 per cent for all native-born. The railway magnate of the West is a Canadian, as was the late Erastus Wiman. America's wizard electrician received his first schooling in telegraphy in Ontario. The inventor of the Bell telephone also lived a while in the same province, lecturing for two years at Queen's University; and the first Atlantic cable was promoted in the United States by a Nova Scotian. Canadians preside over two of the foremost American universities; while Harvard and many other seats of learning have a goodly array of Canadian talent in their faculties. The distinguished professor who has lately left Baltimore to grace the chair of medicine in Oxford is a Canadian, as is curiously the gentleman who has been invited to succeed him. At least one of the great national banks of the United States has a Canadian president; and a

number of prominent banking and financial houses have Canadian vice-presidents, cashiers and other officials. A full list of distinguished Canadians in the United States would indeed have to include also littérateurs, clergymen, actors, members of Congress and even one diplomatic representative of the Republic.

The Intermarriage of Canadians and Americans

The marriages of Canadian immigrants show interesting variations. Most of the "English" speaking Canadians "cross the line" unmarried and after establishing themselves take wives from among their new acquaintances. The majority of the French Canadians migrate after marrying or marry one of their own race in the United States. This is evident from the fact that three-fourths of the 812,350 children one of whose parents is a Canadian have "English" Canadian parents. Grouping all Canadians of the present generation together, 48.1 per cent have married in the United States. This is a large proportion compared with other nationalities. For example only 36 per cent of the English marry in the United States; 36 per cent of the French and 32 per cent of the Scotch. The Canadians, in the great majority of instances when they do not marry native Americans, marry people of British extraction. The actual intermarriage of the 135,521 Canadian men was as follows:

MARRIAGE OF CANADIAN MEN IN UNITED STATES WITH WOMEN OF FOREIGN BIRTH

NATIONALITY OF WOMEN	NUMBER OF MEN	PER CENT
Irish	49,213	
English	30,630	
Scotch	15,718	71
Welsh	1,099	
Canadian	15,488	11½
German	11,569	9
Scandinavian	3,958	3
French	3,246	2½
Swiss	708	
Russians, Bohemians and Poles	637	
Austro-Hungarian	302	3
Italian	119	
Others	2,834	

It is worth noting that in 1900 as many as 90.8 per cent of

the "English" Canadians had become naturalized and 84 per cent of the French Canadians. A student of the French Canadians in New England,¹ writing in 1898, comes to the conclusion that the French Canadians in New England are gradually losing their identity and coalescing with other nationalities, especially the Irish. The birth-rate among them is lower than in Quebec; child mortality, especially up to five years, remains high; immigration has greatly declined and solicited immigration has ceased altogether. The influence of industrial life and of free public schools is doing the rest. The comparative youthfulness of the Canadians, already referred to, is here of moment.

A word as to the effect of all this emigration on Canada's population. During the half century Canada made up one and one-quarter millions of her loss by settlers crossing the water from Great Britain. This and other European immigration together with her natural increase have enabled Canada to show a slight growth in population from decade to decade.

The meager growth has given rise to assertions of a declining birth-rate in some of the older provinces. During the last few decades later marriages and a slightly lower birth-rate are in evidence both in Europe and in America. Agricultural sections especially have lost in population on account of the introduction of machinery. The constituents of the rural population have changed: there are now relatively more children and old folk than formerly, fewer of middle age, those in the prime of life being drawn into the great stream of people migrating to the cities, and in Canada to the new west or to the United States. This is largely the situation in Ontario and in "the provinces down by the sea." That there are now not so many births in proportion to the whole population is in itself natural. But available returns do not allow one to speak of an unusual decline in the birth rate in relation to the people of marriageable age. The assertion of a lower birth rate can accordingly be

¹ Wm. MacDonald "The French Canadians in New England," *Quarterly Journal of Economics*, vol. xii. See also Rev. E. Hamon's *Les Canadiens-Français de la Nouvelle-Angleterre* (Quebec, 1891), and "Growth of the French Canadian Race in America," by Professor John Davidson in *Annals of American Academy of Political and Social Science* (1896).

little more than surmise. Yet it is probably true that families are smaller than formerly. Speaking of Ontario one can even notice that families are smaller in the old settled parts than in northern or "New" Ontario. The result is that Ontario, as well as the Maritime provinces, have little more than held their own in population. This is evident from the following table. This does not hold for Quebec province, where families with fifteen to twenty-five children are not uncommon and where the population has gone on doubling itself since 1680 on the average every thirty years, elbowing out moreover the comparatively few English residents from the country parts.¹

POPULATION OF CANADA BY PROVINCES

PROVINCE	1871	1881	1901
Ontario	1,620,351	1,923,228	2,182,947
Quebec	1,191,516	1,359,027	1,648,868
Nova Scotia	387,800	440,572	459,574
New Brunswick	285,594	321,233	331,120
Prince Edward I	94,021	108,891	103,259
Manitoba	25,228	62,260	255,211
Territories	48,000	56,446	211,649 ²
British Columbia	36,427	49,454	178,657
Total	3,689,257	4,324,810	5,371,315

The relations between Canada and the United States have been in some points very like those between Scotland and England. Compared with Scotland there is the great difference, however, that Canada has a back country with a varied wealth of natural resources which is now attracting a larger population and creating a wider home-market for men and goods. It is matter for congratulation that, in spite of the heavy net losses of population in the past, there is probably no part of the world where the average comfort is so high, and where since 1900 a rapid progress in agriculture, industry and population is so evident as in "The Great Dominion." During the last five years ending with July, 1905, upwards of 550,000 people are

¹ Professor Davidson, in his article already cited, finds that the French Canadians have been doubling since 1763 every twenty-seven years.

² Now estimated at 650,000. The population of the city of Winnipeg, Manitoba, in 1901, was 42,340; it is now over 100,000. Four of the territories have recently been formed into the provinces of Alberta and Saskatchewan.

reported to have settled there. 182,000 of these have come from the United States, 60 to 75 per cent of whom are said to be returning Canadians. The immediate future promises even more impressive results. While the emigration of Canadians is to-day modest and normal, the northward trekking of settlers into Canada seems really but nicely under way. One may make the same remark of the active interest shown by American capital in Canadian industry.

This much may be ventured, however: the presence of many Canadians in the United States and of Americans in the Dominion is a pledge of amity and peace, a pledge that has all the greater value in North America, where unlike Europe, two great nations practically divide the continent. It is therefore conceivable that these nations, having only their politicians and each other to differ with, might forget, in moments of popular excitement, that the national policy of the other is not necessarily hostile in intent. It is well too, in the interests of the *pax americana* that both countries are finding responsibilities beyond their continent. The United States is changing from an American republic to an empire with a world-wide outlook—though with his theory of the "manifest destiny" of Canada Mr. Goldwin Smith regards this very tendency as a misfortune. Somewhat similarly, Canada is passing on from the stage of self-contemplation to the prospect of imperial interests.

S. MORLEY WICKETT.

TORONTO, CANADA.

PARTY CONDITIONS IN ENGLAND

AND THE CAUSES OF LIBERAL SUCCESS IN 1906.¹

THREE is usually a tendency on the part of Englishmen to exaggerate the importance of a general election—to insist that the fate of the British Empire is more dependent on an immediately pending general election or an election in progress than it has been on any general appeal to the constituencies since 1832.

The year 1832 is invariably taken as a dating point in these comparisons. And it is quite in keeping that it should be thus taken; for in 1832 the modern period of British parliamentary history had its beginnings. Before 1832 the British parliamentary system was of the most nondescript character. England, Scotland and Ireland elected their representatives to Parliament on systems peculiar to each country. The mode of electing members to the House of Commons could scarcely be called a system either in England or in Ireland. Scotland was the only country in which there was any uniformity in the representative system. In all three countries electoral corruption was rampant; the landed and moneyed classes were easily dominant; and they were in a position to dictate the personnel and party character of half the members of the House of Commons.

Uniformity was introduced in England, Scotland and Ireland when the suffrage was first reformed and extended in 1832. In

¹ General Election in 1900

Conservatives and Liberal Unionists.....	402
Liberals and Labor.....	186
Irish Nationalists	82
Total	670

General Election in 1906

Liberals (372) and Labor (57).....	429
Conservatives (130) and Liberal Unionists (28).....	158
Irish Nationalists.....	83
Total	670

1867 the suffrage was again extended; and in 1885 there was still another extension; and the net result of these three measures of 1832, 1867 and 1885 is that today every man in Great Britain who has had a settled abode for one year before the voters' lists are compiled may vote at a parliamentary election.

Democracy in England, so far as elections to the House of Commons are concerned, had its beginnings or rather its revival in 1832; and to most Englishmen there is little parliamentary history before the reform of the electoral system three quarters of a century ago. The Reform Act of 1832 is for Great Britain much what the Revolution is for Americans; and hence when an English political speaker desires to emphasize the unusual importance of a general election, he declares that it is the most important since the Reform Act.

Statements to this effect were made from thousands of political platforms in England, Scotland and Ireland during the general election in January, 1906, and with more truth than on previous occasions. There have been many elections of outstanding importance since 1832. Such was the election of 1868, which followed the extension of the franchise to the working classes in the towns and cities, and at which Gladstone pledged himself to the disestablishment of the English Church in Ireland. Such was that of 1885, which followed the extension of the franchise to laborers in rural England, and at which workingmen members first began to be systematically elected to the House of Commons. The election of 1885 thrust the Home Rule question into British politics and gave it a prominence and importance that could never have attached to it so long as the laboring population in Ireland did not possess the parliamentary franchise. Such also was the general election in 1886, which followed the defeat of Gladstone's first Home Rule bill. The election of 1886 decided the tendency in British politics for twenty years. It was responsible for the reaction of the last ten years; and its influence even yet is by no means entirely spent. But none of these elections—1868, 1885 or 1886—approaches in far-reaching importance the general election of 1906; for had the Liberals been defeated and Chamberlain become master of the situation, the reaction would have continued, and the likelihood

is that Great Britain would have reversed her fiscal policy of the last sixty years and would have ranged herself among the nations which shield their farmers and manufacturers by protective tariffs.

Chamberlain did not propose high tariffs. The policy which he had outlined called for a duty of only two shillings a quarter on foreign grain, equally moderate duties on other food-stuffs, and a very moderate protection on the output of British factories. Nobody, however, imagined that this moderation would long have characterized any British protective system. The landowners and the farmers would no more have remained content with a nominal duty on grain and food-stuffs from non-British countries than the woollen manufacturers of the United States would be content with a tariff for revenue only to protect them from importations from Yorkshire, Wiltshire and Scotland. With Chamberlain dominant, or his fiscal system once established, the agricultural interests in England would have forced the pace, just as they did in the half-century that preceded the repeal of the Corn Laws in 1846; and in self-defence most of the non-exporting manufacturers of England and Scotland would have had to fall in line with the landed classes and the farmers and insist on higher duties for their protection. A victory for Chamberlain or even a half victory for the Liberals and free-traders might have meant all this; and certainly there was never a British general election since 1776 in which the United States had more at stake than in the election which has determined that Chamberlain and his scheme are to be thrust into the background and that the fiscal policy of Peel and Gladstone is to remain intact.

No reference has been made to Balfour and his scheme for retaliation. Reference is not necessary; for Balfour's scheme could not have been set up without establishing a protective system; and if Great Britain had decided at the general election in favor of an inroad on its present policy of freedom of trade, the decision would have been in favor of Chamberlain's plan; and Chamberlain as premier of a protectionist government would have been responsible for putting Great Britain on a protectionist basis as fully as was Earl Grey for the Reform Act of 1832 or Peel for the repeal of the Corn Laws.

So far as concerned the fiscal question, the issue at the general election was Bannerman or Chamberlain. Bannerman carried the country, and Balfour is to continue as leader of the Tory opposition in the House of Commons; but if Bannerman had been defeated Chamberlain would have become premier, and Balfour would have been compelled to step down. It was Chamberlain who raised the new issue. He did so almost single-handed; certainly with little effective help from Balfour; and had the popular vote been in his favor the country would have looked to Chamberlain and not to Balfour for the carrying out of a protective policy.

With victory for Chamberlain there could not have been room on the Treasury Bench in the House of Commons for both Chamberlain and Balfour. Chamberlain's success would have meant the end of Balfour as well as the defeat of Bannerman; and the only place of usefulness for Balfour would have been in the House of Lords. Had he adhered to the views which he held until after his defeat at Manchester, it is scarcely conceivable that a place would have been made for him in an administration of which Chamberlain was premier. For two and a half years Balfour had tried a middle course. It had obviously failed. Chamberlain had the upper hand with the Tories and Unionists when they went into the election; and only the overwhelming defeat of the party, and the concessions which Balfour made to Chamberlain when he was a candidate for the vacated seat for the City of London in February, saved for Balfour his position as nominal leader of the Tory minority in the House of Commons.

Although the fiscal policy of Great Britain was at stake, the general election of January, 1906, was not by any means fought exclusively on Chamberlain's proposals. Neither side has since the election advanced any such claim; and now that the Liberals have been returned to the House of Commons by an unprecedentedly large majority, it is impossible to credit all their success to the fight against the newer aspects of Chamberlainism.

Long before the election, almost as early as Chamberlain's abandonment of free trade, there were indications that England and Scotland were weary of Tory and Unionist rule—a weariness

ness altogether irrespective of the developments or rather the ruptures within the Tory party which dated from May, 1903, when Chamberlain began his fiscal reform propaganda at Birmingham. The by-elections between May, 1903, and the end of 1905 were proof of this weariness—this popular conviction that twenty years of power is too long a term for a political party. It is not possible to gauge accurately what effect Chamberlain's propaganda had in these by-electoral reverses for the Tories. The fiscal question was undoubtedly a large factor in many Tory reverses in the constituencies after May, 1903, but in none of these by-elections was the general record of the Unionist government ignored. The late government suffered from the abnormally high rate of the income tax from the time of the South African war. It suffered from the exposures of inefficiency and corruption which came with the end of the war. These two factors told adversely for the Tory government in the by-elections in such middle-class constituencies as Brighton and the Stretford division of Lancashire, which includes a large area of suburban Manchester; for in these residential and suburban constituencies direct taxation is most felt.

From 1886 onward, middle-class England, especially that large section of it which is to be found in suburban London and in the better-class suburbs of all the large cities in the Midlands and North of England, had become increasingly Tory. The by-elections in 1903, 1904 and 1905 suggested that the current had set in the other direction, and that middle-class England was showing a disposition to occupy once more the political position which it held between the Reform Acts of 1832 and 1885.

Several well-defined causes contributed to this movement. One of these, which has already been mentioned, was the heavy burden of direct taxation which characterized the last five years of Tory rule. Another was the thrusting of third-rate and fourth-rate men of aristocratic family into responsible positions in the cabinet and the ministry—positions much beyond their ability—after the Duke of Devonshire, Lord Balfour of Burleigh, Lord Goschen, Sir Michael Hicks-Beach, the late Earl Ritchie and Lord George Hamilton abandoned the Balfour administration when Chamberlain began to assail free-trade. Still another

cause was the growing feeling among the less partisan of the middle-class people that so long as the House of Lords remains as it is today, overwhelmingly Tory and Unionist, Home Rule for Ireland is only an imaginary danger. These influences no doubt accounted appreciably for the Tory reverses at the by-elections of 1904 and 1905, and for the gradual dwindling of the enormous majority with which the late Tory government met the House of Commons after the general election of 1900.

The education question has also been a great factor in this change in political feeling on the part of the English middle-classes. From 1832 until 1886 the Free Churchmen, who are largely of the middle classes, were as loyal to the Whig and Liberal party as the Grand Army of the Republic has been to the Republican party in the United States since the end of the war of the Rebellion. In those fifty-four years the Nonconformists obtained comparatively little from the Whig or Liberal administrations which were in power. The most important concession to Nonconformity in the nineteenth century—the abolition of the Test and Corporation Acts—was made by the Tories in 1828, before the Free Churchmen obtained the electoral power which was secured to them by the Reform Act of 1832. Legislation freeing the Nonconformists from civil disabilities after the act of 1828 was slow in coming. It was grudgingly conceded while the Whigs were in control and was sometimes accompanied by distasteful safeguards for the Church of England; while as concerns official recognition for the Nonconformists—places in the cabinet or in the ministry—the number of Nonconformists who were so recognized until as late as 1885 did not reach more than half a dozen.

Free Churchmen in those years secured little from Whig and Liberal administrations. But Nonconformist political sympathies—the Wesleyan Methodists to some extent excepted—were with the Liberal party, even in the days when it was dominated by Whigs like Grey, Melbourne and Palmerston; and when Gladstone came into power their support of him was even more hearty and steadfastly loyal than of his Whig predecessors in the Liberal leadership.

Gladstone did much less than he might have done for the

Nonconformists—in particular as regards the Education Act of 1870 and the abolition of religious tests at the universities—and as a High Churchman he had little real sympathy with Non-conformity. But the Free Churchmen held to him, at first because of his Irish church policy, and after 1869 largely on account of his religious and family life, which differentiated him from any of the leaders whom the Liberal party had had between 1830, when Tory rule collapsed, and 1867, when he first became premier.

Gladstone would have had this Free Church support to the end of his political life had he not suddenly thrown in his lot with the Irish Home Rulers after the general election in 1885. Then tens of thousands of Free Churchmen parted company from him and the Liberals; and until the by-elections in 1904 began to go against the Balfour government there was no indication that the Free Churchmen—Congregationalists, Baptists, Quakers, Unitarians and Wesleyan Methodists—were returning to their old political allegiance. In 1904 and 1905, they were obviously making their way back into the ranks of the Liberal party. There were other proofs of this besides the by-elections. The movement was obvious at the annual conferences of the Free Churches; and it was even more significantly obvious in the political campaigning which began as soon as the general election approached and in the lists of Liberal candidates who presented themselves before the constituencies.

Chamberlain was responsible for much of the recruiting of the Liberals from the Liberal Unionists. Part of it was due to the causes I have already cited—particularly to general weariness of the unsatisfactory rule of the Tory aristocracy, who were as powerful in the Tory governments of 1895-1900 and 1900-1905 (Chamberlain's place in these governments notwithstanding) as in any of the Tory administrations between the death of Pitt and the breakdown of the Wellington administration in 1830. Moreover, the aristocratic personnel of these 1895-1900 and 1900-1905 governments—especially of the Balfour government from 1903 to 1905 after the resignations due to Chamberlain's new propaganda—was quite as much characterized by mediocre ability as any of the Tory governments between 1800 and 1830.

Not since the landed aristocracy lost its direct control of the House of Commons by the Reform Act of 1832, was there ever such a marked lack of power and ability in a Tory government as there was in the Balfour government during the last two and a half years of its existence. An examination of the list of men who constituted it almost suggests that political conditions were again what they were between the American Revolution and the Reform Act, and that the commercial and industrial classes in Great Britain had little or no part in the election of the House of Commons. It seemed as though the exercise of power for twenty years by the Tories and Unionists had exhausted all the marked political ability that was available at the time of the coalition of 1886; for four-fifths of the men who were of Balfour's ministry when it came to an end in December, 1905, were from no point of view worthy a place in a biographical dictionary of more permanent value than the annual issue of *Who's Who*. The make-up of the Balfour government in its last years was an affront to the intelligence of the British electorate; and, as the general election has now made manifest, the electorate at last came so to regard it.

Distrust of Chamberlain and his newest propaganda and the weakness and ineptitude of the Balfour government had much to do with the movement of the Liberal Unionists in the constituencies back to the Liberal party. But much of the disappearance of Liberal Unionism is traceable to the Education Act of 1902, and the injustice of closing to all but adherents of the Established Church over thirty thousand head-masterships and head-mistressships in 11,600 public elementary schools, the maintenance of which all comes either out of the imperial treasury or out of county and municipal taxation. These positions in the elementary schools are all civil service appointments, as much as clerkships in the state departments at Whitehall or in the post offices or the customs houses; yet by statutory enactment, dating from 1902, not one of these head-masterships can go to a Free Churchman unless he cut loose from the church of his fathers or of his mature convictions and accept confirmation in the Church of England which controls these church schools.

In the old days when Nonconformists were burdened with dis-

abilities, they were excluded entirely from the municipal and the national civil service. Even after the partial removal of disabilities in 1828, a day laborer could not go into the municipal service until he had taken an oath not to use his official position to the disadvantage or the detriment of the Established Church; and as it was only gradually that Nonconformists realized that the civil service was open to them, more than a generation elapsed before they began to make their way in any large numbers into the various departments of government service. As long as the Church of England contributed even a small quota to the maintenance of its elementary schools—even so small a quota as ten or fifteen per cent of the cost—Nonconformists could not and did not hope to take service in these schools; and in the country districts their exclusion from the church schools meant their exclusion from the teaching profession, because there were usually no other schools in their localities, and the entry to the school-teaching profession was chiefly through pupil-teachership.

With the establishment of a national school system under which all the cost of maintaining the schools comes out of public money, Free Churchmen hoped that the school-teaching profession like the civil service would be freely open to them. But the archbishop of Canterbury, a majority of the bishops and Balfour and Chamberlain willed it otherwise; and by the Education Act of 1902—long before Chamberlain declared for protection—there was started the movement of the Free Churchmen away from Liberal Unionism and back to Liberalism—a movement which proved to be such an important factor in the late general election.

It is always difficult to say just when a political party that has come into existence for a special purpose comes to the end of its usefulness and disappears. The Whig party came into existence in the reign of William III to uphold the Revolution of 1688, and incidentally to develop what in the eighteenth century were the great governing families of England, and to make sure that these families did govern and possess themselves of the greater spoils of office. No one can fix the time at which the Whigs disappeared; for there are still Whigs by ancestry,

tradition and sympathies in the Liberal party, although since 1886 most Whigs have sunk their Whiggism in the Tory party. Still it now seems as though it were going to be possible to date the end of the Liberal Unionists from the general election of 1906; and when the memoir of the party comes to be written it will have to be said that it was largely created by Chamberlain in 1886, and that it was largely destroyed by him between the end of the South African war and the general election of 1906 by his part in and his responsibility for the Education Act of 1902, by his sudden conversion to protection and by his energetic campaign for the reënactment of the Corn Laws.

Not quite all the responsibility for the passing of Liberal Unionism can be laid upon Chamberlain. The abandonment of Home Rule by Liberals in Parliament and in the constituencies and the general agreement within the Liberal party that there must never be another Home Rule bill on the lines of the abortive bills of 1886 and 1893 helped on the movement and brought about the disappearance in the constituencies of many of the Liberal-Unionist political organizations which came into existence in 1886. Further, this abandonment of Liberal Unionism, at a time when there had come to be nothing to distinguish it from Toryism, was quickened by the ineptitude and lack of weight of the Balfour administration. English political life would indeed have lost the virility, wholesomeness and earnestness which had usually characterized it from 1830 to the end of Queen Victoria's reign, if, after England had realized that Home Rule had ceased to be a danger, the forces that made Liberal Unionism in 1886 had continued to support such weakness as marked the last two years of the administration which fell to pieces in December, 1905. Reaction had gone too far. The Tory party had exhausted itself long before the end came; and the only hope was in the return of a strong Liberal majority at the general election in 1906.

After the Home Rule split in 1886, the Liberals sustained disastrous losses in the newspaper world. In London they were left with only the *Daily News* among the morning newspapers, and the old *Pall Mall Gazette*—the *Pall Mall* of Yates Thompson's ownership and Stead's editorship—among the afternoon

journals. *The Times* went over; so did the *Daily Telegraph* and the *Daily Chronicle*; so did the *Echo*, now no more, but then the popular London Radical evening half-penny paper; and so did the *Spectator*, still edited in 1886 by Richard H. Hutton. In the provinces, the Liberal newspaper losses included the *Birmingham Daily Post*, the foremost Radical newspaper of the Midlands in the years when Bright was one of the members for Birmingham; the *Western Morning News*, long the leading Liberal newspaper in the section of the country which is tributary to Plymouth; and the *York Herald*. For all practical purposes the Home Rulers in 1886 also lost the *Liverpool Daily Post*, the *Leeds Mercury* and the *Newcastle Daily Chronicle*. In Scotland (which between 1832 and 1885 had been as generally Liberal and Radical as it had been overwhelmingly Tory in the days when Henry Dundas, the greatest electoral manager of his era, was the Scottish parliamentary manager) the Liberals lost the *Scotsman* in Edinburgh, the *Herald* in Glasgow and the *Free Press* in Aberdeen. The *Dundee Advertiser* was the only newspaper of any weight left to the Liberals north of the Tweed, after the split of 1886.

From 1886 to 1892, not less than half a million sterling was expended in endeavors to put on foot new Liberal daily newspapers. Only two of these attempts were successful. The *Leader* and the *Star* in London survive as the sole result of all this expenditure in newspaper equipment, salaries and advertising; and until the crisis on the fiscal question the Liberals were but little better placed as regards newspapers than they were in the first few years which followed the break-up of the party in 1886. In fact, for three or four years previous to 1900, they were not so well placed as between 1886 and 1890; for in the earlier years some of the newspapers newly put on foot, which have since disappeared, were then doing some service for Liberalism.

As the general election approached, several of the great newspapers which went over with the Liberal Unionists in 1886 came to the support of Campbell-Bannerman and the Liberals, and opposed Chamberlain and his propaganda. The *Spectator* threw in its lot with the new government; so did the *Daily Chronicle*, which was the first of the London newspapers to

abandon Liberal-Unionism; and in Scotland at the general election the Liberals had the support of the Glasgow *Herald* and the Aberdeen *Free Press*. This newspaper support was significant of the popular movement from Liberal Unionism back to Liberalism. It was the fiscal question—the battle for free-trade—and the merging of Liberal Unionism in Parliament in an obviously decadent Toryism that brought most of these newspapers back to the Liberal party. Particularly was this the case in Scotland; because the Education Act of 1902 does not apply to Scotland, nor does the Licensing Act of 1904. Both of these are exclusively English questions; and the other popular outcry against the late Tory government—that against the Chinese ordinance on the Rand—would not alone have caused these journals to veer round, although on the Chinese question the *Spectator* had not been at ease for eighteen months before the general election.

In England, the Chinese ordinance had two well-marked effects, both adverse to Chamberlain and his campaign. It impelled middle-class Nonconformists from Liberal Unionism towards Liberalism. It also aroused wide-spread hostility to Balfour and Chamberlain among the working classes—urban as well as rural—and it was unquestionably a powerful influence in favor of the fifty-one labor members who were elected in the English constituencies. Among people who have no interest in the Rand mines—and shares in the gold mines are not widely distributed—there was developed a conviction that the Balfour government had allowed itself to be tricked by the mine-owners into acceptance of the Chinese ordinance. It is now well understood in England that it was part of the policy of the mine-owners—a policy agreed upon in the early months of the war of 1899–1902—to depress Kafir wages by the introduction of Chinese labor when the war should come to an end.

At the end of the war I was on the Rand and also in Portuguese East Africa, which before the war was the great recruiting ground for Kafirs. From my own investigations I know that at that time—July, August and September, 1902—the labor agency of the Chamber of Mines was making only half-hearted efforts to get a full complement of “boys” for the mines at

Johannesburg. Apparently, judging from the Rand newspapers, recruiting was going on vigorously; but the sincerity of the effort to obtain labor may be judged from one fact which is on record and beyond dispute. Wages before the war, when there were 90,000 "boys" on the Rand, were fifty shillings a month. These were the regular wages. After the war, the mining companies by agreement would not pay more than thirty shillings a month. And yet at that time South Africa was still full of British troops; tens of thousands of natives were required for transport, commissariat, railway, dock and municipal service; mealies were commanding unprecedentedly high prices, so that it paid the natives to stay at home and cultivate their mealie patches; and thousands of the "boys" had large sums of money in hand which they had drawn for service with the British troops.

These were the economic conditions which prevailed in the country south of the Zambesi when the Chamber of Mines, in accordance with a policy decided upon in 1900, when the mine-owners and superintendents were among the refugees at Cape Town, determined to cut wages almost in half. It was impossible that the movement should succeed or that under these circumstances native laborers in adequate numbers should be forthcoming for the mines on the Rand. But England is remote from South Africa; and England lost interest after war and bloodshed were at an end. The movement to reduce wages served the end the Chamber of Mines had in view. It kept natives from the mines and thus demonstrated that there was a shortage of native labor. The mine-owners had had Chinese labor in mind long before peace was declared. At least a year earlier, Chamberlain, who was secretary of state for the colonies, had been sounded by the mine-owners of Rhodesia as to whether he would sanction the importation of Chinese coolies. He then brusquely refused to entertain the suggestion—his letter can be found in the report of the Chartered Company for 1901. This did not discourage the mine-owners of the Rand, who exercise an enormously greater political influence in South Africa than the British South Africa Company by which Rhodesia is administered.

The persistent and powerful plea of the Rand mine-owners

was supported by proof (of their making) that it was impossible to obtain native labor and by the contention that without Chinese the mining industry would collapse. Milner, who was then high commissioner, accepted the plea; and in 1904, on the initiative of Lyttelton, the late colonial secretary, Parliament sanctioned the Chinese ordinance which had been passed by the government-controlled Legislative Council at Pretoria. Then began the importation of coolies—"indentured" for, like railway equipment or dry-goods, and reported by cable from Durban to Johannesburg, as the receipt of cotton at seaboard in the South is reported to Liverpool—until at the time of the general election there were 50,000 Chinamen immured in Andersonville-like compounds on the Rand.

Even the bishops, who either voted for the ordinance or failed to vote against it when it was before the House of Lords in 1904, are now tired of the Rand experiment and the retrograde movement for England which it involves; and tens of thousands of Tories who dislike to vote with the Liberals under any circumstances would be immensely relieved if the new Liberal government had the courage to bring the experiment completely to an end.

Following the lead of Chamberlain and Balfour, Tory stump speakers urged the danger of Home Rule—ignoring the existence of the House of Lords—and the protectionists among them enlarged on the splendors of empire and the elusive and mysterious "proffered hand"—the offer in writing of further preferential treatment for British manufacturers in Canada which Sir Wilfrid Laurier is alleged to have made to Chamberlain. But eloquence on these subjects at the electioneering meetings in industrial England did not escape abrupt interruptions from the audience with questions concerning the Chinese ordinance. The loss of three or four by-elections in 1905 was attributed even by Tory organizers to what they described as the popular misunderstanding of Chinese labor; and at the general election the Chinese ordinance turned thousands of wavering votes to Liberal and free-trade candidates.

The Chinese ordinance came more than a year after Chamberlain had broken away from the Balfour administration and

had set out to convert the Unionist party to protection. Balfour must have realized by that time (the parliamentary session of 1904) that the next general election would end the long era of Tory rule. He must have been convinced that the Tories were at the end of their tether; that nothing the government could do could save them, and perhaps also that no step it could take could add much to the jeopardy of the Tory party when the general election arrived. Otherwise it is difficult to account for his failure to disallow the Chinese ordinance. He could either have disallowed it or, better still, have prevented its enactment by the Legislative Council at Pretoria. Had he taken either course he would have broken with Lord Milner, who was then nearing the end of his term as high commissioner in South Africa. He would certainly have disgruntled the cosmopolitan group of stock-jobbers and town-lot speculators who every day assemble "between the chains" in Johannesburg. A few large contributions to the central campaign fund of the Tory party might also have been lost; and there would certainly have been a strident scolding from the *Daily Telegraph*, the organ of the Rand in London. This would have comprised all the probable damage to the Tory party from a rejection of the Chinese ordinance. It is far from certain that the rejection of the ordinance would have lost the Tory party a single vote at the general election even in the parliamentary division of London which includes Park Lane, where the Rand magnates have their palatial abodes. On the other hand, the acceptance of the ordinance by the Tory government and its endorsement by the House of Commons added enormously to the electioneering perplexities and difficulties of every Tory candidate. It was not necessary for the Liberal candidates at the general election to say much against the Chinese ordinance. The bill-stickers did the effective work on this question; and when they had covered all the barns in the rural constituencies and the hoardings in the towns with pictures of Chinamen in the Rand compounds, it was useless for Tory candidates to assert that there was nothing approaching slavery in the three-years' indenture, the felon-like transportation from the steamer at Durban to Johannesburg, the floggings at the order of the compound

superintendents, or the Andersonville structures on the mine reservations. In constituencies which included a large labor element, a Tory candidate could make no effective answer to the hoardings covered with pictures illustrating coolie conditions on the Rand. Two-thirds of the soldiers, army reserve men, militiamen, volunteers and railway men who were in South Africa during the war were back in civil life in 1906, with their names on the voters' lists; and the ex-soldier vote told heavily against the Tories and the Chinese ordinance.

At the general elections of 1895 and 1900, the Tory government had the support of the clergy of the Church of England and of the Roman Catholic Church, because of the promises then held out to them in connection with their schools. It is impossible to generalize as to the votes of the clergy at the election in 1906. But it is reasonable to conclude that the Church of England and the Roman Catholic clergy again voted with the Tories; this time out of gratitude for what was saved to the church schools and their managers by the Education Act of 1902. The act, while it threw the whole burden of maintaining the schools on the national and local treasuries, left the appointment of head-teachers and a large part of the general management of the schools in the hands of the clergy. Each church was allowed to continue its denominational teaching in the schools. These are the only churches which exercise this privilege. Before the act of 1902, the Congregationalists and Wesleyan Methodists had had control of elementary schools, the cost of maintaining which had, between the Forster Education Act of 1870 and the Balfour Act of 1902, been thrown as in the case of the Church of England and the Roman Catholic schools almost entirely on the public treasury. But in these schools, there never was any denominational teaching and Free Churchmen have never—certainly not since 1870—asked that the tenets of their churches should be taught in the public elementary schools.

Roman Catholics in England are of political weight only in the industrial constituencies of the Midlands and the North of England, in which there are large Irish laboring class populations. But in 1895 and again in 1900 the Catholic vote in many of these places was thrown to the Tory candidates, be-

cause the Catholic clergy as well as the clergy of the Established Church, had been given to understand that if the Tories were returned to power something would be done for the church voluntary schools—that is for the elementary schools managed by the Established and the Roman Catholic Churches. More was done for these voluntary schools—parochial schools as they would be termed in the United States—than could have been expected at the election in 1895 or even at that of 1900. But what was gained by the churches was by no means securely held. The privileges both of the Roman Catholic Church and of the Established Church were vigorously assailed by the Liberals from the passing of the Education Act until the general election. The Free Churchmen objected, as I have said, to the power of appointment of head-teachers exclusively from within the two privileged churches. They objected also to the distinctive doctrines of any church being taught in public elementary schools at the public expense; and furthermore, with regard to the Church of England, the Free Churchmen objected to the enormous grants from the imperial treasury to training colleges or normal schools to which admission was denied to all who were not by baptism and confirmation members of the Church of England.

The passive resistance movement which had gone on in England for three years prior to the general election and which had resulted in 70,800 summonses to the police court for the non-payment of local taxes for education, was a protest against these unfair sectarian conditions. The Free Churches are well organized. They are infinitely better organized than they were in 1870 when Gladstone and Forster paid them so little regard in the Education Act of that year—the act which established the school boards that survived until 1902; and on the formation of the Liberal government in December, 1905, and many times before then, the Free Churchmen made plain to Campbell-Bannerman and his colleagues of the Liberal party that they did not intend to be served on the education question as they were a quarter of a century ago by Gladstone and his first cabinet. There were more Free Church candidates than at any previous general election; and largely owing to the passive resistance

movement and other methods of agitation against the Education Act of 1902, 176 Free Churchmen are of the new House of Commons.

The clergy of the Church of England and of the Roman Catholic Church had had long and ample warning that there was no permanence about the settlement of the education question of 1902. Every passive resister who had had his household belongings sold at auction in default of payment of his education tax, every one of the 176 passive resisters who had gone to jail in default of payment, had served to warn the clergy of these churches that their unfair advantages in connection with elementary education were held on a precarious tenure. Birrell's appointment as minister of education was another and still more ominous notification to the same effect, as Birrell is the only Free Churchman who has been at the head of the education department since Mundella was minister of education in Gladstone's 1881-85 administration. Consequently, at the general election, both the Established Church and the Roman Catholic Church were fighting to hold what they had got; and the votes of the clergy and of the electors who think on this question with them, or who could be influenced by them, were given to the Tory candidates without regard to free-trade, the Chinese ordinance, the liquor licensing question, or the weakness and ineptitude which marked the last three years of Tory rule.

No estimate can be made of the number of votes that were given to the Tories in return for the support which the Tory government gave to the denominational schools by the act of 1902; but there is good reason for assuming that the lay vote for the Tories as upholders of the existing school system was very much smaller than it was in 1895. Then both the clergy of the Church of England and the priests of the Roman Catholic Church in England worked strenuously in the interest of the Tories; because at that time the Tories were pledged to grant more government aid to the elementary schools, many of which in 1895 were confronting serious financial difficulties. The sweeping successes of Liberal candidates at the recent general election are proof that adherents of the Established Church in large numbers must have put free-trade, the Chinese

question and other questions at issue in the election before the question of the maintenance of the existing system of church schools. The success of Liberal and Labor candidates in the industrial constituencies in the North of England and the Midlands, in which Irish electors are numerous, is also proof that the priests of the Roman Catholic Church did not carry the electors of their parishes in favor of Tory candidates to anything like the same extent as in 1895. At that election fifteen or twenty seats were lost to the Liberals owing to the defection of Irish voters, who were influenced by the attitude of the priests on the school question.

It has long been claimed by the foremost authorities on the working of the Elementary Education Acts—by such authorities as the present and past presidents of the National Union of Teachers—that the religious difficulty is an issue for which the clergy of the Established Church and the priests of the Roman Catholic Church are solely responsible; that ninety-nine of every hundred parents have always been satisfied with the religious teaching given in the board schools and have not desired that denominational teaching should be included in the curriculum of the elementary schools. The general election goes a long way towards substantiating this claim. It is the children of the working classes who attend the elementary schools; yet as the result of the election there are now 176 Free Churchmen in the House of Commons, most of them pledged to complete popular control of all elementary schools, to the exclusion of denominational teaching and to the abolition of all religious tests for teachers in schools maintained out of public funds.

A measure in the legislative record of the late Tory government which gave much dissatisfaction because it was a concession to powerful vested interests, long associated with the Tory party, was the Liquor Licensing Amendment Act of 1904. Before this act was passed it was within the power of the county and borough magistrates, assembled in brewster sessions, to refuse to renew the license of any drinking place solely on the ground that there was no public need of it; and between 1887, when a decision of the House of Lords finally determined that under the then existing licensing code the magistrates had this

power, and 1904, hundreds of licenses were so refused each year.

The judgment of the House of Lords was most disturbing to the brewery companies and to private concerns in the trade; for these companies had, on a very moderate estimate, spent from £100,000,000 to £115,000,000 in buying up licensed houses and tying them to the breweries so as to secure a monopoly of the local trade. All this money had been invested on the assumption on the part of the brewers that when once a license had been granted to a drinking shop—no matter how local sentiment and local conditions might change—the magistrates could not refuse the renewal of the license unless the licensee were guilty of at least three serious offences against the licensing code.

The brewery companies had put their capital into these houses on this assumption, notwithstanding the fact that every liquor license from 1552 to 1904 had carried on its face the intimation that it was good only for the year of issue—for the year that lies between one brewster sessions and the next. After the decision of the law lords in 1887, however, and until as late as 1903, renewals of licenses were refused in many parts of England for no other reason than that there was no public need of them, and that the continuance of unnecessary drinking places added to the work of the police. In the year of the House of Lords decision (1887), there were 106,941 licensed drinking houses in England; one to every 242 of the population. By 1903 the number had been reduced by 1,584, owing to the closing of what the magistrates regarded as unnecessary houses, besides a further diminution due to the abandonment of licenses because of lack of business or structural unsuitability of the houses to which licenses had been attached. In the meantime the brewers were in a state of continuous alarm, and they went to Balfour, who was then prime minister. Balfour agreed with them that the decision of the House of Lords jeopardized the interests of the liquor trade and that if there was in law no property right in public house liquor licenses there was urgent need for legislation to establish such a right.

The interview between the brewers and the premier was in

March, 1904, long after the liquor trade had adopted the motto "Our trade our politics"; and in the session then current Balfour made good his pledge to the brewers, and the Licensing Act was carried through Parliament. Under the act licenses are now treated as property; and when the renewal of a license is refused because there is no need for the house, compensation must be awarded to the dispossessed licensee and to the owner of the house, whether the owner be the licensee or, as is more frequently the case, the licensee be merely the agent of a brewery company. The compensation fund is raised by a levy on a *pro rata* basis on the surviving public houses in the police area. By this arrangement only a restricted number of houses can be closed each year, the number being determined by the amount of money available for compensation. The magistrates have thus much less freedom of action, much less discretion, than they had before 1904; while the act adds greatly to the value of all existing licensed houses.

The Tories were in opposition at the general election. They had, however, been in power to within a month of the polling. They had been in power practically since 1886; and they had a long legislative and administrative record to defend. They had to apologize for the inefficiency and corruption which were disclosed at the end of the war in South Africa. While their legislative record satisfied the Rand mine-owners as concerned the Chinese ordinance, the Church of England and the Roman Catholic Church in regard to the schools, and the brewing interests by virtue of the recognition of a property right in liquor licenses, it did not give general satisfaction to the rank and file of the Tory party, who had derived no advantages, direct or indirect, from any of these measures.

The burden of imperial taxation also told against the party among its less partisan adherents. In 1885 the income tax stood at eight pence in the pound; and in two years between 1880 and 1885—the period covered by the second Gladstone administration—it had been as low as five pence. For the fiscal year 1905–06 the income tax—payable by all men and women on all their receipts from whatever source above £160 a year—stood at one shilling in the pound; and only once since the

general election in 1900 had it fallen below one shilling; while in 1901-02 it was one shilling and two pence, and in 1902-03 it was one shilling and three pence or 6½ per cent—higher than it has ever been in the modern history of the impost.

The legislative and administrative record of the Tories was thus unfavorable to them. The country was manifestly tired of them; and in addition to the weariness and the feeling that a change from Tory rule had come to be imperative, there had been developments outside Parliament between the election of 1900 and that of 1906 that proved most helpful to the Liberals. The most important of these were: (1) Chamberlain's propaganda for protection; (2) the conviction in England and Scotland that the danger of Home Rule had been dispelled after Gladstone's retirement from the House of Commons in 1894; and (3) the fact that the Liberals had come to a working agreement with the Labor party, both with the Independent Labor party and with those trade unionists who were intent on having their representatives in the House of Commons, but who had not identified themselves with the Labor Representation Committee organized in 1890 by Keir Hardie, the member for Merthyr Tydvil.

Many of the large landed proprietors in rural England, many of the clergy in rural parishes and many of the tenant farmers early gave in their adhesion to Chamberlain. But the laborers in rural England never gave his movement any support; and it is only necessary to turn to the electoral map as it now stands, with the county divisions returning only 64 Tories out of a total of 292 English county members in the House of Commons, to see what effect the vote of the agricultural laborers had in making an end of Chamberlain's scheme.

On the electoral franchise as it existed until 1885, free-trade would have fared badly in all the agricultural counties; for then only landowners and large tenants had votes, and the agricultural laborer had merely to look on at an election and to cheer the candidate that his farmer employer and his farmer's landlord were supporting. Today every farm laborer who rents a cottage—no matter if the rent is only eighteenpence or two shillings a week—is on the voters' list. Voting by ballot has been

universal in England for thirty years. It was difficult to persuade the farm laborers, when they first began voting in 1885, that the ballot was really secret. Since 1885, however, a better educated and more independent generation of farm laborers has arisen. They understand that except in the very rare case of a scrutiny the ballot is secret beyond all peradventure; and for three years before the general election, at every by-election in a rural division, agricultural laborers had been marking their ballots against Tory and protectionist candidates.

It has come down by tradition to the laborers in rural England that the Corn Laws never brought them any better wages; and although wages today seldom exceed eighteen or twenty shillings a week, they know that this is much more than the laborers received between the French Revolution and the abolition of the Corn Laws. These traditions have been handed from one generation of English farm laborers to the next. They are of the folklore of rural England; and it was not necessary, after Chamberlain began his campaign, that free-trade speakers in agricultural England should dwell much on conditions in England when the landlord-enacted Corn Laws were on the statute book and when rural laborers were without parliamentary representation in the House of Commons.

A generation ago agricultural laborers who openly supported Liberal candidates ran some risks: they might have been confronted within a week after an election that had gone against the Tories with the need of finding new employers. Few agricultural laborers had to carry any such risk at the last general election; for today the laborers are less dependent on the landowners, the clergy and the farmers than ever before in the history of agricultural economy in England. Today they are free to vote as they choose, not only because the ballot is secret, but because, poor and insufficient as their wage may seem to people accustomed to American wages and the American scale of living, English rural laborers are now comparatively independent. The last twenty-five or thirty years have seen a never-ending procession of laborers from rural England wending its way to London, Birmingham, Manchester, Liverpool, Leeds and Newcastle, and to the great centers of the iron and steel and

textile industries which are scattered over the Midlands and the North of England. It is the young men who go, and their going is so continuous that there is a lack of efficient farm labor all over England; and today few and remarkably advantageously placed are the farmers who can discharge a laborer, or even make his staying uncomfortable, because he may have chosen to vote at a parliamentary election in opposition to his employer.

This new economic and social freedom of the rural laborer meant much for the Liberals and free-traders. It meant more even than they counted upon when it was determined to put up candidates in every county constituency, and not to allow any seats, however apparently securely held, to go to the Tories by default. In industrial England, and especially in the textile counties of Yorkshire, Lancashire and Cheshire, Chamberlain's scheme from the first met with universal opposition. It commended itself neither to employers nor to work-people. The mill-owners in the cotton and woollen industries promptly realized that if Chamberlain should be empowered by a popular vote to enact a protective tariff, he could not possibly do anything for the advantage of the cotton and woollen mills which export their product. These men knew that if there were duties to protect British farmers there must also be duties to protect British manufacturers in the home market; and that as a result of these two sets of duties there would be demands for advances in wages from the strongly organized unions in the textile and engineering trades, and an advance in price of building materials and of all descriptions of equipment and mill supplies. As for foreign competition in the textile industries, the protectionists never even attempted to persuade Lancashire and Yorkshire that it existed.

Soon after Chamberlain had propounded his scheme at Birmingham in 1903, he disclaimed any idea of imposing protective duties on raw materials. This explanation he made because of the outcry in the cotton and woollen centers of Lancashire and Yorkshire. But the explanation was of very little service to Chamberlain. It was not regarded as adequate by the men in the textile industries. They realized that if Canadian lumber were to have a preference at British ports over lumber

from the Southern states or from Norway, South Africa and Australia would insist on preference for the wools they export to Great Britain. Granting that Australia and the South African colonies were accorded preferential treatment for their principal exports, it was asked in Lancashire whether India, Egypt and other over-sea possessions of Great Britain in which cotton is grown would not demand, with justice, similar favors; and if these were conceded, both the cotton industry of Lancashire and the woollen industry of Yorkshire would be confronted with difficulties beyond measure.

Lancashire, Cheshire and Yorkshire, in which are comprised all the great centers of the textile industries, at the general election of 1895, out of a total of 122 members returned 84 Tories and Unionists. At the general election in 1900, 82 Tories and Unionists and 40 Liberals were elected. The answer of the textile counties to Chamberlain at the general election in 1906 was the return of 95 Liberals and Labor men, all opposed to protection, and only 17 Tories. The Chamberlain reverses were nearly as serious in the coal and iron counties of the North and Midlands. Birmingham remained loyal to Chamberlain; and so did the county of Warwick. Elsewhere in the iron and steel districts the Tory and protectionist candidates were defeated and large gains accrued to the Liberals.

The Liberal success in industrial England was partly due to an understanding between the Liberal organizers in London and in the constituencies with the Labor Representation Committee, by which three-cornered contests were avoided. Labor candidates at the late elections were divided into three groups—miners' union candidates not associated with the L. R. C.; candidates nominated by this committee; and candidates of the Social Democratic Federation, the oldest of the socialistic organizations in Great Britain. These socialist candidates were not recognized either by the local Liberal organizations or by the central organizations of the Liberal party in London; and they went to the polls in nine constituencies in opposition alike to Tory and Liberal candidates, but without success, not a single Social Democrat being elected.

The miners' candidates were adopted as the Liberal candidates in the constituencies they contested; and except in a few instances the candidates of the L. R. C. were not opposed by Liberals. The first Labor members were elected to the House of Commons in 1874. They were Burt of Morpeth and Macdonald of Stafford, both presidents of miners' unions. Between 1874 and the end of the Parliament in 1905, other Labor men were elected; most of them, though not all, trade-union officials. But before the Parliament of 1906 was chosen, the number of Labor men never exceeded seventeen, which was the strength of the Labor vote in the short-lived House of Commons elected in 1885, after the extension of the franchise by Gladstone's act of 1884.

All the Labor men in the House of Commons up to 1900, with the exception perhaps of Keir Hardie, owed their election to the support of the Liberal organizations in the constituencies from which they were chosen; and with the exceptions of Broadhurst, Howell, Cremer and Burns, these members were enabled to bear the expenses of a parliamentary contest and to maintain themselves at Westminster through the willingness of the trade unions, with which they were connected, to draw on their funds to secure direct representation in Parliament.

Until 1901, there was no national organization for securing the return of direct representatives of Labor. The National Miners' Federation, long before 1901, was committed to the policy of direct representation; but its efforts were exclusively in behalf of miners' trade-union officials, and not all of the miners' unions are of the Federation. The first national movement intended to include men in all industries, skilled and unskilled, developed out of the Trades Union Congress, and was begun in 1901. Keir Hardie and the other organizers of the Labor Representation Committee appealed to all the trade unions; and except the miners' unions, practically all of them came into the new organization and agreed to make a small levy on their members to pay twenty-five per cent of the expenses of Labor candidates at elections and to provide Labor men returned to the House of Commons with salaries of £200 a year.

Under the constitution of the L. R. C., candidates nominated

under its auspices agree to "form a distinct group in Parliament, with its own whips and its own policy on Labor questions." It is further agreed that the Labor group shall "abstain strictly from identifying itself with any section of the Liberal or Conservative party;" and that the members of the group shall "abide by the decision of the group, and shall appear before their constituencies under the title of Labor candidates only." The object of the last clause is to differentiate the Labor members from the older Labor men in the House of Commons, such as Broadhurst, Bell, Burns, Howell and Cremer, who, in the Parliaments between 1885 and 1905, acted with the Liberals and who formed the nucleus of the group returned at the general election of 1906 as Liberal-Labor members. Keir Hardie was of the House of Commons when the L. R. C. was organized; and between 1901 and the dissolution of the Parliament of 1900-1905 he was joined by three other members, elected under the auspices of the L. R. C.

As soon as the committee was organized in 1901 the Labor propaganda was begun, and candidates were put in the field in readiness for the general election. They were nominated in some constituencies which at normal times were Liberal, but which had elected Tories at the general election held while the war was in progress in South Africa. Ultimately, an understanding was attained between the Liberal organizers in London and the L. R. C. A certain number of industrial constituencies were assigned to the Labor men; and the L. R. C. on its part agreed not to jeopardize the chances of Liberal candidates in other constituencies by nominating Labor candidates. In this way fifty L. R. C. candidates were in the field at the general election; and, except where candidates of the Social Democratic Federation were nominated, there were few of the three-cornered contests which in 1895 and 1900 had resulted in Liberal or Radical seats being handed over to the Tories.

The L. R. C. went into the elections with a parliamentary fund of £6,000 in hand. By its platform its candidates were pledged to

The principles embodied in the Trade Disputes Bill.

The Amendment of the Compensation Act so as to give compensation to all workers in every trade from the date of the accident.

The amendment of the Truck Act to prevent stoppages of any description from wages.

The amendment of the Unemployed Act so that employment can be found at trade-union rates for those unable to obtain work.

The abolition of enforced Chinese labor in South Africa.

The establishment of a state pension fund at sixty years of age.

An extension of the Housing of the Working Classes Act.

Returning officers' fees to be a charge upon the national exchequer.

Adult suffrage.

The establishment of an eight-hour working day.

The Trade Disputes Bill, put in the forefront of the Labor program, was a measure introduced in the Parliament of 1900-1905 and supported by the Liberals and all the Labor men, to offset the decision of the House of Lords, sitting as a court of appeal, in the Taff Vale Railway case—a decision which made trade-union funds open to attack in the law courts by employers who had been damaged by the wrongful action of trade-union officials. The House of Lords' decision of 1900 was the most serious blow at trade unionism since trade unions were given a legal status in 1869; and it was in large measure directly responsible for the organization of the Labor Representation Committee.

The attitude of the new Labor party towards all other candidates—Liberal and Tory—was defined in a general appeal to trade unionists issued on the eve of the elections. "Do not vote," reads one of the paragraphs, "for any candidate who is opposed to the trade-union program. Vote for all Labor and other candidates who are prepared to resist taxes on food and industry, to support an amendment of the Education Act, and the other reforms embodied in the program of the Trades Union Congress." All trade unionists and wage-earners were also urged to work zealously for the return of Labor candidates "and to show by their determination how anxious the working classes are for an honest government, desirous of legislating for the wants and requirements of the people." "Now

is the chance of a lifetime. Don't throw it away," continued the manifesto.

We want something beyond the old demand for a living wage. The demand for labor today should be for a higher standard of living. In all constituencies where Labor candidates are in the field, let there be no division as to whether a Labor candidate is of one school of thought or another, as all are progressive ; and vigorously show your opponents what workmen are capable of doing when they are put to the test.

A sub-committee of the Trades Union Congress issued this appeal—not the L. R. C. It was signed by members of the Liberal-Labor party and by members of the L. R. C.; and was an appeal for support for all three groups of the Labor party in the 1900-1905 House of Commons—the miners' representatives; Liberal-Labor members, of whom Burns and Broadhurst are typical; and the members of the L. R. C., who were returned to the House of Commons after the organization of the committee in 1901.

Fifty candidates were nominated by the L. R. C. Twenty-nine were elected, in addition to fourteen miners' members and fourteen Liberal-Labor candidates. There are accordingly in the new House of Commons fifty-seven Labor men of three different schools. This is more than three times the number in any Parliament since Labor members began to appear in 1874. It is only eight less than the Irish Nationalist following of Parnell after the general election of 1880, the last election on the comparatively narrow franchise established by the second Reform Act in 1867. None but miners—mostly miners' union officials—are of the exclusively trade-union group. The Liberal-Labor group is more comprehensive, as it includes four journalists; an engineer (John Burns); a grocer; a stone mason; a barge builder; and officials of the Seamen's and Firemen's Union, the Navvies' Union and the Railway Servants' Union. In the L. R. C. group there are four cotton operatives' union officials; four representatives of printers' unions; an ex-civil servant; an elementary school teacher; a grocer; and representatives of engineers, miners, bricklayers, carpenters, furniture makers, shipbuilders and boiler makers' unions. Several of

the unions which are represented in the L. R. C. group, such as the Amalgamated Society of Engineers and the London Compositors' Society, are making parliamentary allowances to their men in addition to contributing to the general fund of the L. R. C., the fund out of which the members are receiving salaries of two hundred pounds a year.

The old school Labor members, those who are now of the Liberal-Labor group, and the Miners' group, sat with the Liberals on the government or the opposition benches, responded to the whips of the Liberal party and were closely allied with the Liberals in Parliament and in the constituencies. These relations are being continued in the new Parliament; and the Liberal-Labor group (now one less in number than at the opening of Parliament, by means of the retirement of Broadhurst and the election of a Liberal member in his place at Leicester in March last) and the fourteen miners' representatives sit on the government benches. The members of the L. R. C. group, however, sit on the benches below the gangway on the opposition side of the House in company with the Nationalists. Government whips are not sent to them; and the members of the group are so intent on maintaining their independence that although the National Liberal Club, the rendezvous of popular Liberalism in London, is open to them on terms sufficiently easy not to embarrass their finances, they have decided to hold aloof from the club.

The appearance of this new force in English politics is no surprise to students of English parliamentary and electoral history. After the franchise was extended in 1884 there were indications that such a development was in sight. Immediately following the general election of 1885, however, there came the division in the Liberal party over Home Rule. By the time England and Scotland had ceased to have any dread of Home Rule, there came the South African war and still another division in the Liberal and Radical party. The abnormal conditions prevailing from 1886 to 1903 really account, it seems to me, for the fact that Labor, although in possession of the parliamentary franchise, was so slow in making for itself a commanding place in the House of Commons.

Never since present day Liberalism began to be traceable as a great force in English politics has a Liberal government been in so independent a position as the government which was confirmed in office by the general election of 1906. From 1830 until the incoming of the Irish Nationalists in the Parliament of 1874-80, Whig and Liberal administrations were always more or less dependent on the votes of the Irish members. Even in the Parliament of 1880-1885—the high water mark of Liberalism in the reign of Queen Victoria—Gladstone had a majority of only 42 over the combined forces of the Tories and Nationalists; and it is a matter of record that in the 1885-1886 Parliament and the Parliament of 1892-95, the Gladstone and Roseberry governments were absolutely dependent on the Nationalist vote. In the new Parliament, the Liberals have a majority of 130 over the combined vote of the Tories and protectionists, the Irish Nationalists and the twenty-nine members of the L. R. C. group. The Liberals are now free of the Irish Home Rule question; the Newcastle program of 1885 is of the past; and as the constituencies are unmistakably with the government and are eagerly looking for progressive legislation, which has fallen much into arrears during the ten years of reaction under Salisbury and Balfour, the House of Lords is not likely to prove obstructive—it is not likely that there will be any repetition of the tactics of the Upper House which characterized the enactment of the measure for the extension of the franchise and for the redistribution of electoral power in 1884 and 1885.

There are two reasons why the House of Lords will not be assertive. Except in 1884-1885 it has never since 1831 brought itself into direct and obvious antagonism to the well ascertained popular will; and it is even less likely to do so in the new Parliament because of the weak, disrupted and almost leaderless plight of the Tory party in the House of Commons, and because in the House of Lords itself there is no leader of the parliamentary ability and strength of Salisbury, who almost single-handed made the fight in the Lords over Gladstone's Parliamentary Reform Acts of 1884-1885.

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OCEAN FREIGHT RATES AND THEIR CONTROL THROUGH COMBINATION¹

THE sea is free, and in a consideration of its freight rates the cast-off theories of land transportation are found to apply to its principal lines of trade. The most pronounced change in the theory of land transportation is the growing recognition of the fact that competition is not the controlling force that it was once supposed to be. Upon the ocean, on the other hand, the theory of free competition still finds application. The reason for this difference between land and sea transportation will be most easily seen if one considers for a moment what constitutes the unit of transportation by land and by sea. Upon the ocean it is a single ship. Ports are open to all; the ocean is a free and toll-less highway upon which the ships of all nations may and do come and go at will. Upon land the railway train renders the similar carrying service, but the carrying unit is the railroad itself complete from end to end. The equipment for carrying a ship's cargo 3000 miles is not ten per cent more costly than that for carrying it across a narrow channel. The cost of equipment necessary for supporting a train may be roughly put at 50 to 100 per cent of the value of the train for every mile it goes. Before a train can be run 3000 miles there must have been years of labor for the building of 3000 miles of railroad, requiring the investment of one to two hundred millions of dollars in roadway, terminals, branches, feeders, repair shops, *etc.* A new competitor for this same 3000-mile service must expend another hundred or more millions prior to running the first train and, as population increases, the cost of railroad building increases because of higher land values. Equipment for sea carriage becomes cheaper year by year through the progress of invention. Ocean transportation investment requires the ownership of vehicles only—move-

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able capital. Railway transportation investment is chiefly in the form of fixed capital—road. This heavy investment of fixed capital must earn dividends where it is placed or be almost total loss. In contrast to this the steamship or sailing vessel capital is the most mobile in the world.

A discussion of ocean freight rates must be introduced by a comparison of the two distinct methods of operating ships and carrying on the transportation business: (1) charter traffic, in which the unit of operation is a single vessel working independently; and (2) line traffic, in which many ships combine to render one service.

i. *Charter traffic.*—The fact that the sea is an open highway enables any navigator to go where he will and engage singly in the carrying trade, if he wishes to do so. This absolute independence of the single ship has its economic advantages. No costs need be incurred except the necessary costs for the particular traffic in hand. In contrast with this the great steamship line must stick to its route whether harvests be good or bad. The ships must be advertised, and sent on their voyages as advertised, whether they be full of cargo or only partly full. The schedule is the soul of the line and it joins with many other costs to make the traffic of lines more costly than that of the individual vessel that is run with only the necessary costs of physical operation. If the shipper can deal in ship-load lots, he has no need of a liner. He hires a vessel of his own. The hiring is called chartering, hence "charter" traffic. The vessel, being always for hire, goes anywhere and everywhere, hence the name "tramp" traffic.

The primary qualification of line traffic is regularity and unusual speed. These entail costs, and there must be higher freight rates to make line traffic profitable. The primary object of tramp or charter traffic is cheapness with efficiency. There is room for both services. The exacting traffic, the traffic in manufactures and passengers, is increasing and with it the demand for line traffic and corporate organization. Along with this is the growing traffic in cheap and bulky goods requiring the service of unorganized cheapness. The trade of the present comprises many million tons of cheap and bulky raw mater-

ials which must be transported in great quantities and at the lowest possible cost. These usually go in ship-load lots as charter traffic.

If steel rails, iron, locomotives or other heavy manufactures are moved in sufficient quantities, as is occasionally the case, they may become charter traffic, but the staple articles for this type of ocean work are grain, lumber, coal, ores, sugar, cotton, petroleum, nitrate of soda, jute, etc. This is absolutely a world trade. The chief market for wheat is Great Britain and the nearby parts of the continent, but this one commodity is shipped from the Atlantic ports of America from Galveston to Montreal, from San Francisco, Columbia River and Puget Sound on the Pacific, from the Argentine Republic and India and from Russian ports on the Baltic and Black Seas, from the Danube River and sometimes from Chile and Australia. Cryolite comes from Greenland; nitrate of soda from Chile; nickel ore from Caledonia; iron ore from Arctic Norway and tropic Cuba; jute from Calcutta; wool from New Zealand; sugar from Germany, Cuba, Java, Brazil and Peru. There is no ocean, no zone, no continent, no great island that does not contribute its threads to this world mesh which touches hundreds of ports and is constantly being threaded by thousands of ships, yet each of these voyages is a unit and usually made as the result of a particular bargain between the shipper and the carrier. Here competition reigns.

A cargo is in the warehouse and a ship at the anchorage: what shall be the rate if the ship takes the cargo? Both parties are after profits. If there is a cheaper ship in sight, the shipper takes it. If there is a better cargo in sight, the ship takes it. If cargoes are plenty and ships are scarce, the rates will soar to the point where it is cheaper to let the goods lie rather than move them at the increased rate. A 300 per cent rise in rates has occurred within a fortnight although plenty of ships were lying idle in the next ocean; but they happened to be fifty days away and the goods had to go within a month. In this case for that particular traffic the idle ships did not exist, although the next month they might be on the spot and rates might come down again to their former level. If ships are plentiful and

cargo scarce, the ships bid for the cargo and rates go down and down. If profits cannot be made, the manager aims to cover expenses; if not whole expenses, then small loss rather than great loss, and he ties his ship up only when his operating losses exceed the loss of absolute idleness with its rapid depreciation and interest and other costs. The charter rate is a marginal rate. If there are ten ships and five cargoes, the cheapest ships get the cargo. If there are ten cargoes and five ships, only the highest paying cargoes can be moved. Fluctuations are, therefore, sharp and there seems to be a present tendency for rate depressions to be prolonged. There are several reasons for this prolongation. One is the appeal that the shipping business makes to the gambling instinct. There are seasons of great profit; ships at times pay for themselves in a year. There are also years when there is only loss, but the great prizes serve as a magnet to draw too many people into the business. It is easy for a newcomer to get into the shipping business. It requires no special knowledge. A person needs only some capital and the acquaintance of brokers who will buy him a ship and other brokers who will secure her cargo on commission.

It is a custom in the business, especially in Great Britain, for an enterprising manager to form a stock company and build a few ships which the promoter manages on a salary or commission. The ship builder or the public will often loan money on these ships so that the company has a divided financial responsibility in stock and bonds much like an American railway. The greater number of charter boats are apparently owned outright, but when depression strikes the business and there is any tendency toward maintenance of rates the manager of a mortgaged fleet is goaded to desperation by the knowledge that the holders of the bonds and probably of the stock also must have some satisfaction or his ships will be foreclosed and his company and his business wiped out. Thus the mortgaged ship is a rate depresser.

Another factor tending to prolong depression is the cheapness of new ships. When the demand for new ships falls off, the ship builders face the necessity of turning off their men. To

prevent this they will build ships at a very low figure and keep their force together for better times.¹ During such periods of cheap ship building the manager of chartered vessels sees a good opportunity to provide himself with some thoroughly modern ships at a low figure and be ready for the hoped-for advance when it comes. If it does not come immediately, his new vessels, possessing all the latest economies and low capital cost, can be operated more favorably than older, less efficient and more costly vessels. The result of this reasoning and of the action which grows out of it is that the amount of building does not readily respond to depressions in rates, and these depressions drag on to great length because ship building continues in spite of them. The low rates which resulted from a number of causes in the spring of 1901 can scarcely be said to have had any relief till the autumn of 1905. Any signs of higher rates brought out idle ships from their moorings, and these ships promptly put the rates down to the dead level again.

Why do not the owners of vessels for hire agree upon rates and maintain them? This problem is akin to that of universal peace among nations and really does involve the harmony of many nationalities. Will the Greek, the Turk, the Chinaman and the Hindoo agree with the men of Liverpool and London, New York, Hamburg, Marseilles, Genoa and Christiania, and will they all adhere to the agreement if they make it? What if the agreement leaves a man's ship idle while the other 98 per cent of the tonnage is busy with profitable voyages at the agreed rate? By the slightest shade of undercutting he can be deluged with cargoes. Will he abide by loss that others may profit? Even if the ship owners of the world should agree, and keep their agreement, there are a thousand other men now in their employ who know the business. Capital awaits investment.

¹ These changes in the price of ships and in the prosperity of the shipping business quickly respond to the state of the carrying trade. In 1900 the chairman of a British ship-building company in addressing his stockholders said: "A ship which four years ago could be built for 70,000 pounds today would cost 100,000 pounds." In August, 1900, a freight steamer 11 years old brought at auction 30,000 pounds. In November 1901, after a break in rates, the same steamer sold for less than 18,000 pounds. See *Lloyd's Weekly Gazette*, Oct. 5, 1905, p. 638, and *Fairplay*, November 21, 1901.

Ship builders will build new ships for any responsible party in a few months. Ships are always being sold so that you and I may buy some today, place them in the hands of a broker or agent whose business it is to find cargoes and manage ships, and behold there is competition again upon the sea. And the biting and absolutely controlling force of this competition lies in this: If 98 per cent of the shipping should be operated under a maintained rate agreement that gave good profits and there arose any dearth of cargo, the two per cent of independent ships with a rate a shade below the agreement rate would be desperately busy and profitably employed. All the idleness would be with the agreeing ships, the new building would be with the outsiders, the increase of idleness would be with the agreeing ships until their union perforce broke down because of the large number of idle ships in the union and the prosperity outside of it.

The line separating profit and loss seems to set the limit to which charter rates can possibly be raised by agreements among carriers. Above that point there is no need of agreements, since, if cargo is more abundant than ships, rates are high from natural causes and, if there is an excess of tonnage, the rate cannot be upheld for the reasons previously stated. This statement is borne out by the history of attempts at rate control and by the united opinion of ship owners themselves.

The lack of successful rate control by the owners of charter vessels cannot be charged to lack of experience in coöperation. There is a large number of shipowners' associations in all large ship-owning countries and especially in England, where the bulk of this class of shipping is owned.¹ These associations exist for nearly all the purposes that can be attained by coöperative action. The annual report of one of the Liverpool associations for 1905 describes efforts to effect favorable legislation in London; to change local harbor regulations; to persuade the government to take action on the policy of various foreign governments toward British shipping; to change charter party forms (form of chartering agreement); to change coal trimming charges at

¹ In London alone there are at least nine such organizations.

Cardiff; to reduce Suez Canal tolls, *etc.* One strong and growing association exists only to fight organized labor and many associations are concerned chiefly with the ever present insurance question. They are often perfectly willing to spend £5,000 in combating a case involving £100 and a precedent. One of these bodies—the North of England Protecting and Indemnity Association—reported that on December 31, 1905, there were enrolled in the association 2,470 steamers with a tonnage equal to about half of the total under the British flag. For some purposes at least the ship owners know how to coöperate.

The recent prolonged depression in freight rates which began in the spring of 1901 has produced two serious attempts at charter rate control of an international character, and their results help to show the limitations upon such efforts and their essential futility as producers of profitable rates. The condition of the shipping business in this period was such as to drive men into agreements, if any economic force could produce that result. The shipping journals were full of letters, articles and editorials proclaiming the unprofitable conditions of the trade. The president of the Clyde Steamship Owners' Association declared in his annual address, January 20, 1903, that it was hardly possible to sketch out a round voyage on which a freighter could pay expenses. A British shipowner of much experience stated in March, 1905, that "on the average, British sailing ships of over 3000 tons (dead weight) have lost about £1000 each per annum during the last three years and that smaller vessels have fared almost as badly." On December 29, 1904, *Fairplay* summarized the report of forty-nine tramp vessel owning companies for the year then ending. They had 393 vessels of 1,184,358 gross tons, capital £10,253,752 and debt £3,157,-128. Assuming 5 per cent interest on the indebtedness and the customary 5 per cent for depreciation, they would have required £140,040 more than their total earnings to avoid a loss even if no allowance be made for income tax and management expenses. A month previous to the publication of the digest of these reports, the same journal had declared editorially that, "taken upon the whole, tramp tonnage is being run at a disastrous loss." At the end of 1903 a similar analysis of thirty-six

companies showed results like those cited above, and six of the thirty-six had actual cash loss for the year on operating expenses, to say nothing of expenses of management, interest on bonds, depreciation or dividends.

In such times as these anything tending to improve the condition of rates was eagerly snapped at. The French bounty-fed sailing ships, receiving a government bounty that paid almost enough to run them, were in a position to make competition exceptionally ruinous for British and German ships of the same class. There was an international conference of these sailing vessel owners in Paris in December, 1903. It drew up a constitution for the "Sailing-ship Owners' International Union", which was to become operative when subscribed to by the owners of 75 per cent of the shipping involved. The organization, with headquarters in London, was formally launched in June, 1904, when the first rate committee announced the schedule of minimum rates for the guidance of its membership. The circular sent to the members in June, 1905, states that

The Sailing-ship Owners' International Union . . . has to do only with vessels of 1000 tons net register and upwards, and the control of the union is in the hands of an international committee, the members of which are appointed annually by the various nationalities in agreed-on proportions.

Although it is obvious that much good work might be done in many directions by such an international association, the only object of the union for the present is the binding together of sailing-ship owners not to accept less than certain agreed-on rates of freight for the principal homeward voyages in which sailing-ships engage, and members of the union are bound under a penalty not to charter their vessels at a lower rate than the minimum prescribed by the committee of the union for any particular voyage.

The intention of the union is not to push up freights to such an extent as to oppress shippers or check business, but to prevent the ruinous competition which has come into the business and reduced freights to such a point that they could not possibly pay expenses, and in many cases were leaving heavy losses to owners.

The union was originally started on the basis of not less than 75 per cent of the British, French and German tonnage interest being included, but for 1905 the percentage has risen to 87 per cent.

By November, 1905, the seventh freight circular had been issued, but most of the rates had remained unchanged, except to permit a small reduction to cargoes of over 2500 tons. The organization is still in healthy existence. Its limitations become apparent when it is noted that it applies only to the longest voyages, namely, the Pacific coast of North and South America, Australia and New Caledonia to Europe, and that it covers only the return voyage, leaving absolute freedom for the outgoing voyage and for all other trades.

A shipowner who had been influential in promoting the Union said of it in a letter in December, 1905 :

This Sailing-ship Union would never have come into existence if it had not been for the French sailing-ship bounties and the absurd manner in which these bounties are paid. If the French ships had been competing on level terms, there would have been no need of any union. So far as I know there has been no attempt on similar lines to control sailing vessel rates in the past, and I know of no combination among shipowners which has held together as this one has done. The minimum rates adopted are intended to prevent loss rather than make gain. In most cases they are lower than cost, taking into account the outward rates that have been ruling, and which, of course, come into the calculation for the round voyage. The idea of the union, however, has been, if possible, to steady the freights, interfering as little as possible with the ordinary course of business and the natural fluctuations of the market. At the present time, unfortunately, the only place from which anything in excess of the minimum rate is obtainable is from Australia, the conditions of the markets on the Pacific coast both of North and South America being such that the minimum rate is barely obtainable. The minimum rate applies to vessels of 2500 tons, and for every increase on this size a slight reduction is allowable, as it was found that the larger ships could not get employment as long as the smaller vessels were available on exactly the same terms.

As far as the members of the union are concerned, the minimum rates have been maintained wherever they have been fixed, say west coast North and South America and Australia. Unfortunately, owing to the want of cargo on the west coast of North America, and the accumulation of tonnage in South America, various union ships have been unable to get the minimum rate and have required to move in ballast to some other part of the world where prospects were better. The small percentage of ships still outside the union, moreover, has at

various times caused trouble by cutting in just under the union rate. The prospects are, however, that for next year fewer ships will be outside the union.

An owner with a fleet of vessels in the union states its advantages thus: "I think you might put it that they provide for a small loss rather than a great loss. This has undoubtedly been for the advantage of sailing-ship owners". The advantages of being among the few outside the union are shown by recent freight quotations. The San Francisco *Chronicle*, January 28, 1906, states that "apparently anything willing to take less than combination rates is promptly picked up". On February 18, the same journal stated: "Freights continue lifeless to the United Kingdom as well from the north as from here. Charterers are not willing to pay combination rates, and it makes a deadlock for the present". That deadlock means ships lying idle in the harbor, eating up the owners' bank account. If that were being tried when a two per cent cut on a profitable rate would give employment, it is not likely that the union would long survive.

The small scope and importance of this union as a force in the control of world rates appears from considering that it is limited (1) to minimum rates which are on a basis that affords no profit (*e.g.* wheat 22 s. 6 d. from San Francisco to Liverpool); (2) to certain long voyages; (3) to returning voyage only; (4) to vessels of certain size only; (5) to sailing vessels only, when sailing vessels all told are not now doing over eight per cent of the work of ocean transportation.

The same conditions of depression that drove the sailing vessel owners to Paris brought about a somewhat similar conference of steamship owners in Copenhagen in February, 1905. The success of the sailing vessel owners was one of the reasons that led to the assembling of those interested in the commerce of the Baltic and White Seas. This narrow geographic unit has corresponding to it what might almost be called a commodity unity also. The trade is predominantly in wood and lumber. The great world markets for oversea lumber are the United Kingdom, Germany, Holland, Belgium and France. This import trade amounts to more than 15,000,000 tons, and less than

a fifth of it comes from across the Atlantic. The remainder, or more than 12,000,000 tons, is shipped from Norway, Sweden and Russia. This is one of the greatest items in the world's trade.¹

This traffic, while international, is little greater in geographic extent than is the traffic of the American Great Lakes. Some of the leading shipowners dissatisfied with unprofitable timber carrying, conferred for three days at Copenhagen in February, 1905, and fixed a minimum scale of rates for the various ports, and then went back to their various countries to work up support for the scheme so that it might be put in force at another conference in June. In this they were successful, but only as regards the outgoing rate on lumber. The total tonnage affected by this agreement is only about 1,612,000 divided among 1,048 steamships. Although this Baltic and White Sea agreement is purely local in character it is the most comprehensive among charter steamship owners that has as yet been seriously considered.

II. Line traffic and the transatlantic situation.—Line traffic upon the sea presents several distinct contrasts with the charter traffic in the matter of rates and the ease and extent of competition which I have been considering. One of these differences arises because of the size of the unit of competition. In charter traffic the unit is merely a ship, while in the line it is a number of ships—enough to give a rival service. This may include a considerable number of large and expensive ships and an organization of agents on the land to manage and solicit traffic. This fact of the size of the unit is a deterring influence in competition merely because it is easier to do a small thing than a larger one of the same kind. Other conditions of free competition remain the same. The same freedom of the sea and of port facilities exists, and for all line traffic the fundamental rate-governing force is competition in the form of charter rates. If the line rate rises, tramps flock in and even it up. This was clearly stated by Sir Thomas Sutherland at the sixty-third annual meeting of the stockholders of the Peninsular and Oriental Steamship

¹ American wheat exports amount to from four to seven million tons per year and sugar (about 2,000,000 tons) is our heaviest import.

Company, in December, 1903. In commenting on the low rates received that year by the line steamers of his great company he said:

But as a matter of fact, it is the world's tonnage at large, the cargo-carrying tonnage of the world at large, which dictates, or rather determines the current rates of freight both by cargo steamers and by mail steamers, and we are simply dragged into the wake of that great movement, as, I suppose, the great American combine¹ has already discovered by this time.

This statement of the influence of the charter vessels upon the rate for line ships is very easily understood by noting the ease with which a considerable share of line traffic may be diverted to charter vessels or charter traffic to line vessels if the gap between the rates of the two services becomes too great in one case or too small in the other. Within certain limits the two must rise and fall together.

A second difference is that line competition has an element of vindictiveness, retaliation or penalization unknown in tramp competition. The tramp can cut under the current rates, get her cargo and go. She has freedom from the direct rate effects of her action and there is no retaliation possible. If one line goes under the existing rate, it is probable that the others must do it also to get their share of the traffic. Then no one is any better off than before; all are worse off from the reduced income and are ready to punish the party responsible for the loss. Consequently the rate-cut among lines often leads to a rate war during the continuance of which both parties lose heavily. There is accordingly often a common rate without any formal agreement. No one wants to cut the rate and run the risk of a rate war. The normal situation thus resembles more closely an armed truce than any other relationship.

A third difference between the competition of the two types of service arises from the irresponsibility of the tramp manager with regard to demoralizing the market. As each bargain is a law unto itself, the manager may demoralize the market by his

¹ A reference to the financial difficulties of the International Mercantile Marine Company, which, despite its great size, had had little or no beneficial effect on rates.

rate making and sail his ship away into the great world, and her next contract may be made three months later in the antipodes. It will be under other conditions, probably little if at all affected by her present rates. It is otherwise with the liner. She is practically fixed to a certain route, she ordinarily sails from a certain port to a certain other port or series of ports and comes back again to repeat the same voyage. The line vessel that cuts rates must suffer the consequences because the line continues to do business in that port and must deal with the demoralized rates. The line has customers whose interests must be protected. Shippers of course prefer the regularity of the line; and the natural law which makes the tramp irresponsible and the liner responsible forces a certain amount of parallel if not united action among the managers of lines.

The common knowledge among a community of shippers drives to common action. It is necessary and inevitable that all ocean lines competing in the same port know what the others are doing. It is necessary because if they did not know of the actions of rivals, one carrier, by cutting the rate the smallest shade, would get the lion's share of the business. It is inevitable that they know because of the constant search of the shippers and their brokers for cheap rates and their diligent efforts to get contracts at the lowest possible rates.

Starting with this fact of common knowledge and parallel action among obstinate rivals there is great variety in the stages of mutual action among steamship lines, ranging from rate agreements and division of territory to freight and profit pools. Theoretically it is easy to control the rates or traffic conditions among ocean lines. All that is needed is that the ocean lines that might compete shall agree on conditions and maintain them. In some trades this is practiced in all its simplicity, but the larger the trade, the greater the difficulty, a difficulty amounting in the case of the transatlantic trade to practical impossibility so far as rates are concerned.

There is probably less organization and less rate control among the carriers in the transatlantic trade than in any other in the world. At least four reasons appear as partial explanations of this condition: (1) the size of the trade; (2) the effect of

grain and raw materials; (3) the many nationalities involved and the consequent difficulty of their coöperation; (4) inland freight differentials by railroads. I shall consider these in order.

The stupendous size of the trade from America to Europe puts it almost or quite beyond the limits of what the human mind can grasp, control and weld into an agreeing whole. In 1902 when the International Mercantile Marine Co. was forming it was stated that this trade was giving employment to about three million tons of shipping. The Morgan interests succeeded at great and probably ruinous financial sacrifice in getting possession of but one-third of this, and with it they have steadily met losses that threaten to engulf them. The remaining two million or more tons of shipping working here are possessed by many owners having little common interest.

For this trade the United States and Canada are one. American goods go down the St. Lawrence and Canadian goods go out by United States Middle Atlantic ports. The peculiar geographic form and transportation conditions of the center of North America make easy the access from the central region to the sea at any point between Montreal and New Orleans and Galveston. If Montreal rates do not suit, the shipper in the central basin will turn to Boston or New York or Philadelphia, or Baltimore or Newport News or New Orleans. The transatlantic traffic is, at its American end, one traffic despite the variety of the geographic factors involved in the trade of all America with all Europe, and a rate agreement to be successful must cover the whole. Possibilities of effective combinations are very different in a trade like that from the same coasts to Australia, which requires four or five steamers per month all from one port instead of fifteen or twenty per day from a long row of rival ports. The lack of any corresponding geographic or commercial unity in Europe causes the carrying trade with America to fall at its eastern end into three main divisions: (1) the United Kingdom, (2) the continent, (3) the Mediterranean. The trade of each of these divisions with America makes the usual unit in rate problems and plans although they sometimes apply to the smaller unit of the carriers to a certain European port.

The second factor of confusion in transatlantic rates is grain, the great staple commodity in the transatlantic cargo. To begin with, this is essentially charter vessel cargo and the liner that gets it must bid down for it; hence the rate is prevailingly lower on line than on charter vessels. The line vessels make this sacrifice of space because grain serves as good ballast. A certain amount of it brings the ship down to her intended draught and causes her to sail better. In connection with higher class freight the difference is that between profit and loss. Grain, therefore, brings the line vessel in direct competition with the tramp. If grain is abundant the ships can usually fill up at good rates; but if it is scarce, many of the ships must have it at any price. There are cases on record of grain being carried for nothing. With such an imperative demand rate agreements are difficult to enforce. The frequent fluctuations in the grain supply are familiar to all. The shipping on the Atlantic must be able to handle, when it comes, the large surplus above America's growing requirements. This surplus varies. In 1904 the grain and flour exports from the United States to Europe amounted to about four and a half million tons. The preceding year the same commodities furnished seven and one-half million tons of freight. Since the grain trade is irregular in quantity, it renders the transatlantic trade hard to organize through rate agreements. The fact that the unit of shipment is large, usually tens of thousands of bushels, gives the smallest fraction of rate difference a deciding influence.

In a trade as great as that across the Atlantic there are possibilities of numerous small agreements which have limited scope but can yet do something to steady conditions in given grades of exports and benefit shipper and carrier alike. It is possible for two lines from the same port to have some kind of an understanding, and it is possible for the carriers to any one European port to get together, as do the London and Liverpool carriers. This is made easy and almost necessary by the fact that nearly all the freighting arrangements and final bargains for the New York lines are made on the floor of the Produce Exchange by freight brokers representing the shippers, and the agents or representatives of the steamship lines. Not

only are New York freight bargains, and therefore rates, made there, but nearly every steamship line sailing from America, whether it be from Montreal or Galveston, is represented. Most of the important American railroads also have representatives there trying to get seaboard work for their lines. It is therefore physically easy for the representatives of any group of traders to get together, and temporary agreements without number have been made and constantly are made.

The carriers are always seeking agreement rather than competition. Where two principals of competing services send their representatives on "change" in the daily search for freight it is with instructions to get the best rates that can be obtained, to work together to that common end and not rashly to disturb rates for the sake of a small lot of visible freight, as this causes dissatisfaction among shippers in addition to reducing income. Sane business demands as much.

The freight market is governed in the main by supply and demand, but the minor adjustments are made by continuous conference. One agent on the floor of the exchange says to the representative of a rival line: "We are holding for 8/- on flour for next week's sailing. What are you booking for?" "7/6" "Well you are making a mistake, you had better hold for 8/." "All right, we will, if we can." A day later the second party may announce to the first that he is not getting any flour at 8/- and may declare his intention to quote a 7/6 rate. The first may or may not adopt the same rate, but for one day at least there has been an attempt at an understanding. Not a stroke of writing is involved, no contract, no penalties, no time limit, and there is perfect freedom of secession. The traders to any city or country may get together daily or weekly and make agreements to last till the next meeting. Sometimes the agreements are more formal and may last for a considerable period, but their existence at best is precarious. For example, about 1880 there was a Liverpool agreement (minimum) on grain along the Atlantic seaboard. Port by port it was broken at all the "out ports" but still stood at New York until at last a firm of brokers bought a steamer badly in need of repairs which were to be made in England. She could get no freight at the agreed minimum and her owners

cut the rate a farthing, took the cargo and ended the agreement which had until that time been observed.

It is more than accident that the name of an ocean freight agreement is a "conference" as the "South African Shipping Conference" or the "Transatlantic Shipping Conference." The name is indicative of the method of formation and often of the actual result. There has been a "Transatlantic Shipping Conference" since 1868. As the date indicates it was the out-growth of the disturbances of the American Civil war and of the final triumph of the steam lines over the sailing lines in this trade. This conference has attempted little in the direction of the formation and regulation of rates. It has busied itself with numerous other matters of importance to all Atlantic carriers. For example, it has worked for changes in the printed form of bills of lading for the benefit of the carrier; it has secured a practically uniform bill of lading; it negotiated with the National Lumbermen's Association for certain improvements in the method of receiving and inspecting lumber for export; it acts in behalf of all in regard to legislation on quarantines, channels, *etc.* In 1902 this conference, with operating headquarters in New York was made the mechanism for the carrying out of a minimum freight agreement to the United Kingdom which was made in Liverpool and planned for the relief of all interests. The transatlantic carriers were suffering from a rate depression which in twelve months had cut their earnings from exceptional prosperity to hopeless loss. At one time this agreement included forty-six lines and services.

The rate agreement involves of necessity a rate classification—a task beset with difficulties. One commodity may be incidental to one line and fundamental to another. For good loading and best income a ship must have a mixture of heavy and light goods. A ship full of wooden ware or furniture would ride high in the water with unused buoyancy. She would even be in grave danger of overturning. A shipload of steel rails would leave three-fourths of the hold space absolutely empty. By combining these two classes of freight a ship can carry at one time three-fourths of a full cargo of rails and three-fourths of a full cargo of light goods, and at the same time be in the

best possible shape for safe navigation. This advantage of mixed cargo gives the loading agent a perennial but ever-changing problem. He is seeking some particular kind of freight to complete a ship's cargo; having already made good contracts for light goods, he wants a thousand tons of heavy cargo to make the ship ride well. He must have it, and it may be that the contracts already made provide almost enough income for the voyage. He would willingly, therefore, cut the rate to get heavy cargo. But there stands the agreement, and the heavy goods can only be had at forbidden rates. The attempt to lay down a classification for the numerous lines and services results every day in some firm having a strong desire to break the rate on some commodity, and in the course of time every shipper desires at some time to break almost every rate.

Shipowners are not prone to make public the details of their little known business and it is fortunate for the writer's purpose that the Atlantic Shipping Conference got dragged into the Interstate Commerce Commission hearings on differential rates to the various Atlantic ports. The detailed history of this agreement as narrated in testimony before the Commission¹ reads like a description of an attempt at making ropes of sand. The original agreement, made in Liverpool, January, 1902, was signed by nearly all lines plying between the Atlantic seaboard and the United Kingdom and the testimony showed that lines not signers were, at the beginning at least, observing the same rates. The agreement showed its inherent weakness by providing that

Any of the signers may withdraw from same at the expiration of fourteen days after the receipt by others of his or their desire to do so, and the withdrawal of one shall *ipso facto* release the others from their obligations under this agreement unless they may otherwise determine.

The inherently competitive nature of their business drove the companies to this device of unanimous consent to any action, and unanimous consent, as may easily be seen, reduced the sphere of action to small proportions, but without it no agree-

¹ Differential Freight Rate Case 746, N. Y. vol. i, May 18-20, 1904, pp. 303-502.
See also N. Y. vol. ii, June 20 and 21, pp. 1002-1042.

ment was possible. The life of the agreement was one rapid series of adjustments and readjustments, concessions and compromises, made necessary to heal the dissatisfaction of some line which had served notice of its intention to withdraw. Finally, after an existence of two years and four days, a break in rates brought about such a condition that the final meeting of the conference found that there was no proposition upon which they could unite, although several of the many attempts were negatived by the votes of but one or two lines. The agreement was thereby ended, but the carriers to London met again the same day and continued the agreement so far as the American trade to that port was concerned.

During the life of the general agreement the committee of management had frequent meetings in New York and some changes were affected by correspondence through the secretary's office. Rates were promulgated for trial during two or three weeks, and the life of the agreement was continued from meeting to meeting. These extensions never covered so much as one month, and one week was the more common period of their duration. The rates were fixed with differentials to make living conditions for all ports. This included the right to adjust out of the rate any marine insurance differences between the port in question and New York and Boston. From time to time difficulties arose and concessions in rates would be granted, permitting the carriers from a certain port or ports to cut the rate a certain amount to secure a prescribed maximum amount of named articles of freight in order to get ballast, after which the usual rates were resumed. The converse of this was also practiced when certain ports refused to carry certain commodities for a period so that other ports might get their share. This refusal to carry was brought about by the mere quotation of a rate sufficiently high to drive the freight to the ports agreed upon. Witnesses stoutly maintained that there was no percentage division of traffic, and minutes placed in evidence showed that the following motion was lost at the last meeting of the conferees: "That a committee be appointed to arrive at some equitable way of dividing the results of the traffic, if not by a physical division, then by pooling the earnings."

Special agreements to change temporarily the conditions of shipment from certain American ports were duplicated by similar agreements concerning the carrying of goods to certain of the European ports. The agreement covered only named articles; the list was occasionally changed, or the rates on single commodities altered. At times the desire to compete would be gratified by withdrawing the agreement on a certain article or articles for a named period, and when the London agreement succeeded the general agreement, February 4, 1904, it postponed the enforcement of its rate on flour until May 1. It must be borne in mind that these rates were minimum rates only. Higher rates were always hoped for, and in at least one case they were definitely recommended by the conferees. The changing nature of ocean rates and the method of their making is indicated by the telegram from the Allen line at Montreal to the secretary of the conference, stating that "We are accustomed to revise our rates weekly on Fridays, in conference with the other lines [at Montreal]. The rate on sacks [flour] to Liverpool will be discussed tomorrow, and the result will be communicated to you by telegraph."

In summary it may be said that the minimum freight agreement did control rates from the Atlantic seaboard to the United Kingdom for two years. The agreement practically covered only articles essentially requisite as ballast cargo. The owners intended by this so-called minimum agreement to lay down the principle that they would rather not carry than go below the rates they named. To show the economy of transatlantic service it is only necessary to state that the minimum on flour was 8.44 cents per hundred pounds, and on provisions (meats) \$2.50 per ton.

Even this feeble minimum freight agreement was rendered nugatory by the American railway differentials between the interior and the seaboard. Montreal, Philadelphia, Baltimore, Newport News and Norfolk had since the early eighties, as a result of railway agreements, a lower rate on heavy articles than New York, Boston or Portland. The ocean freight agreement had this differential to deal with. In the beginning the full differential of three cents per hundred on flour was equalized

by adjusting ocean rates, thus establishing a common through rate to Europe *via* all ports. Later the inland differential was reduced gradually to one-half, but in the end it was on this point that the 1902 agreement was wrecked. The end was due to the demand of a Boston line for full equalization in through rates by ocean adjustment. This was declined by a line from Baltimore, which refused to submit to sea differentials that absolutely wiped out the advantage of the land differential.

As stated above the disruption of the general agreement in February, 1904, was not the end of the practice of rate agreements. It was the end of the service of the Transatlantic Shipping Conference as the means for conducting a rate agreement. The general federation broke up into practically the component parts that had formed it, and these went on as before. The London traders met immediately and continued the agreement so far as it affected them and their agreement is still in operation. The Glasgow traders and various other traders after the general break gathered themselves together as before and made and informally maintained their agreements. Forty-six services, embracing all the complications of the trade of a continent, were too many to be harmonized under one management—at least at the first attempt.¹

A complicating element in any such rate agreement as that described above is the ownership of steamship lines by railways. The Canadian-Pacific openly owns a transatlantic steamship company and other transatlantic lines are practically in the same condition. These lines are particularly hard to satisfy in any ocean rate agreement because the motives of their managers differ from those dominating the purely ocean carriers. The railway steamship line is merely a feeder to the vastly more valuable railroad. The combined management can easily afford to lose some money on the ships to get more freight for the railroad. Private car lines and their mileage rebates and other indirect cuts in through rates have also entered in as factors here.

¹ Space prohibits any detailed narration of the agreements and wars in the trade of the United States with the continent and with the Mediterranean. It should be noted that the scope of the operations of the Hamburg-America Company and its monopoly of the port of Hamburg makes it a conference in itself.

The result is that satisfactory agreements are made with extreme difficulty between steamship lines that are *bona fide* investments and those that are mere props to a modern American railroad system.

This adjunct—an ocean carrier with different and additional motives for cutting rates—has moreover easy means of hiding its policy. For practical purposes the through rate from the inland point to Europe may be easily cut. The other steamship lines may remonstrate, and be informed that the ocean rate is being maintained. This may be literally true; but since the railway and the steamship line are financially one, a cut in the railway rate has the same effect upon competitors as a reduction in the steamship rate.

The formation of the International Mercantile Marine Company was intended to effect savings through consolidation and to control transatlantic rates. During the period of the Boer war ocean rates everywhere were prosperously high and all carriers made unwonted dividends and added phenomenal sums to their reserve funds. In the spring of 1901 rates went down to the loss point and with large ship-building operations still in progress there was no relief in sight. Early in 1902 the minimum rate agreement was made, but it was never counted upon as a dividend earner. It was made merely to prevent rates from sinking below the cost of handling in and out of the ship. During this same winter and spring the Morgan combination was in process of negotiation and formation. The aim was to make it as large as possible; large enough to exercise, with the aid of its German allies, a controlling, supporting and steady influence on rates for both passengers and freight. There was apparently no idea of excessive monopoly rates, but there was confidence of easy control and of avoiding rapid fluctuations and the low points of depression that had at recurring intervals been bringing loss. The path to this goal was beset with difficulties. In the first place, some of the lines that were bought could be secured only at extravagant prices, and the capital was still further increased by stock-watering in the style of franchise-tenure finance. The Cunard line, one of the greatest factors in the North Atlantic and from this distance apparently an es-

sential to the success of the venture, could not be bought because the stock was in strong hands. The alarmed British nation came to the rescue with new mail contracts and loans at low rates for new and faster ships.¹ The two great subsidized German lines, with the personal backing of the emperor and the strong financial and moral support of the rest of the government, appear to have been impressed by the promising force of the new undertaking. They made an offensive and defensive alliance with the combine, and later joined with them in the purchase of the Holland-American line, leaving the French line the only remaining continental interest of the first rank, and with it they have apparently since concluded a firm alliance.

As a rate controller the great corporation of Mr. Morgan and Mr. Griscom has been a failure. Ocean rates showed no indication of new influences in the autumn of 1902 when the new company went into operation. The combine and its allies have had to deal with a world condition of depression in ocean rates, and they have had the lively competition of the Cunard line, which has had a more independent attitude than any of the other and smaller independent lines. It is an old, well established, conservatively financed and admirably located line, which is in a position to hit back with equal or better force after every move the Mercantile Marine or their associates may make in competition against it. The fast services of the combine are rivalled at Liverpool by that of the Cunard, and the continental emigrant business is drawn off at the Adriatic side door. The Cunards could not be absorbed at formation, they have not been coerced by competition and rate wars, and the conditions of truce under which the rivals have at times been acting in the intervals do not seem yet to have reached a basis for long duration. In addition to Atlantic competition, the International Mercantile Marine Company, which is essentially a carrier from Atlantic ports, has had to meet the vigorous and uncompromising efforts of the Illinois Central and other Gulf railroads in

¹ The general public thought this was a great aid to the Cunards. Some of the New York leaders in transatlantic shipping think that the government agreement is a handicap to the Cunard line because in consequence of it \$13,000,000 are tied up in two ships.

building up Gulf commerce in bulk goods at the expense of the Atlantic ports.

The independent, competitive and chaotic condition existing among the lines connecting the United Kingdom and the United States is in very marked contrast to that of the continental American carriers. There are but two German transatlantic lines of importance—the North German Lloyd and the Hamburg-American. They represent the culmination of a series of consolidations that ended competition in their respective ports. They never actually wage war on one other, and where their pockets are affected they are astonishingly agile in getting the best results for both, yet standing together to prevent encroachment by any new concern. With their close traffic understandings and pooling arrangements, with their alliances with the International Mercantile Marine Company's Red Star line and the French line, and with the joint control of the Holland-American line, a remarkable front is presented by these five dominant companies in the continental freight business.

A freight classification in the ocean-carrying trade is a sign of great stability. The shipowner in the Liverpool-New York trade hardly knows what freight classifications are. His life is a turmoil and a scramble for freight. He cannot make a classification because the exigencies of his competitive business would make him break class i before he had completed class vi, so he does not classify. But the Germans do. The North German Lloyd and its three partners just mentioned have a west-bound freight classification of six classes. That for 1906 was printed and distributed in New York in November, 1905. It divides freight into six classes and it is currently reported in shipping circles that the rates are maintained as announced.

The character of the goods has a profound influence on rate making and classifying as is shown by the different practices of the Germans in the east and west-bound trade. They can maintain a rate going west but do not attempt to do so on east-bound traffic. The difference is largely due to the character of the freight. The trade to the west is largely valuable manufactures which can pay high rates. It is in these goods that the classification holds. The six classes do not provide for all articles.

Heavy freight is almost excluded from the classification and reserved for special arrangements which are estimated to cover at least 25 per cent of the traffic of one of these lines. As the east-bound freight is nearly all heavy freight, it is all reserved for special arrangements. This is necessary because goods of this character cannot bear high freight charges and would go to their destination by transhipment from British, Dutch, Belgian or French ports if the German lines were not free to meet the current rates. The freight rates on west-bound goods, though high per ton, are really low in percentage of value of the goods. This high value makes it unprofitable for much of this class of freight to lose any time in following slower, more devious, but cheaper routes. Hence it becomes the easy prey of the carriers with agreements and classifications. The London carriers are unique among British-American carriers in that they have a freight classification. It has seven classes and was formed in 1901 by crystallizing the results of long practice. It is instructive to note that it is in a trade controlled by few and strong hands, and it covers but an estimated 10 per cent of the traffic—the higher class manufactures. On the other 90 per cent, the agreeing London carriers feel that they must be free to meet the market, which sets the rate for all freight moving in great quantities.

Why do the ocean carriers from Germany to America agree so completely while those from Great Britain compete so constantly? There are at least three reasons that may be cited in partial explanation. The first is the much smaller size of German maritime operations and the smaller shore-line that this commerce serves. In Germany there are but two ports engaged in Atlantic foreign trade, and agreement is geographically simple. In England there are three different coasts and at least six ports of the first magnitude and many smaller ones, and each strives to get a larger share of the national commerce. The second reason may be found in the national characteristics. The Englishman loves his independence and will undergo financial privations to have it. The third reason is the influence of the German government. The great German steamship companies are probably more nearly a part of the government than any

other important lines in the world. They receive heavy subsidies and are benefited by the great desire of Germany to be a sea power. A part of the subsidy is in the form of special railroad rates on export goods on the government railways. The personal side of this government relation, the lively interest of the German emperor, who uses the great force of his personal and social prestige to uphold this branch of German sea power, is also important.

Will the greater part of the carrying trade upon the North Atlantic ever be controlled by stable agreements? As has been previously pointed out, the difficulties are many, but the chances of agreement seem better for the future than they have ever been in the past. Several reasons for this may be mentioned:

1. The companies are steadily getting larger and the time has now been reached when the agreement of seven or eight interests would produce a minimum agreement that might hold if a satisfactory freight classification, omitting grain and flour, should be made.

2. Grain, long the great staple of the east-bound trade, is now becoming of less relative importance in the trade because of the great increase in manufactured goods. This freight change is favorable to rate control because manufacturers will stand a much higher and more steady rate than that paid by grain.

3. Recent improvements in ship building have practically emancipated the newer ships from their old dependence upon grain. When they had to have it as ballast, they were willing to bid low to get it. Now the newer ships admit water into their ballast tanks, and they no longer depend on grain if it does not pay them as freight. The lowest mark in grain from New York to Liverpool occurred prior to 1890 before the general introduction of water ballast.

4. The losses of the last great depression have brought home to the ship-owning fraternity the necessity of some protection, and they have had some rather valuable object lessons in the various attempts that have been made to alleviate the situation. One of these object lessons is the passenger agreements which have been much more successful than the freight agreements.

There are some principles any freight agreement must observe.

It must limit itself to a minimum and there must be rather frequent readjustments of rates and of traffic divisions. It is because of the necessity of readjustments of traffic divisions that most of these arrangements in other trades have come to their end. The steamship companies will probably have to do as the railroads do, agree on a rate, but compete in some of the other forms that competition may take, readjusting their agreements with resulting changes in conditions. The aim of steamship rate agreements should be to maintain living rates and leave all parties free to grow and develop and then readjust without a resort to the rate wars which now come so easily. This is no simple task, and it is further complicated by the fact that it is impossible to establish and maintain a rate which prohibits the export of produce to a competitive market. Those interested in shipping think that they have been much more ready to make rate concessions for this than the American railroads. This is, of course, in part because while the railroads, during the last five years, have been crowded with domestic traffic, the steamship lines have been sorely pushed for freight.

The prompt concessions made by the Atlantic steamship lines have unquestionably rendered a valuable service to America's export trade. As one carrier expressed it: "If the hog crop in Austro-Hungary is larger than usual, it affects the provision market of the whole continent, and we have to reduce the rate on Chicago packing-house products to get them on the market. And the rate on southern cotton-seed oil is always the same as the rate on provisions." The tremendous force of competition and the steadily growing passenger traffic have made astonishing improvements in the service and the ships. The economies of size and the demand for it on the part of passengers is bringing to the North Atlantic an increasing fleet that is not likely to be for any long period unable to cope with a freight traffic which is declining in bulk. The future promises a continuance of the conditions that make for rate concessions for exports and which permit the maintenance of satisfactory rates only through some form of agreement.

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THE LEGAL POSITION OF GERMAN WORKMEN.

A UNIFORM body of laws regulating the position of labor, its franchises and rights, and imposing the limitations within which these franchises and rights can be exercised, does not exist in Germany. For the explanation of this singular fact, it is necessary first to bear in mind the political composition of the country. Germany is not one state but twenty-six states; and while many identical labor laws have been passed for the whole of the empire there remain departments of labor legislation in which the old particularism has persisted. Moreover, Germany presents the interesting spectacle of an industrial country in which modern economic innovations and ancient survivals exist side by side. Observing the remarkable expansion of German industry and commerce in recent years, one is apt to forget that the era of the factory, the era of production on a large scale (*Grossbetrieb*), is still young in that country, and that alongside the factory system, as western countries know it, there continues still, in a condition if not of buoyant vigor yet of unmistakable vitality, the guild system, which elsewhere surrendered long ago to the pressure of adverse economic forces. Hence it is that the earnest efforts of the more conservative labor law reformers in Germany have for many years been directed towards helping the guilds to adapt themselves to the altered conditions of modern days, so enabling them to retain something of their old and tried capacity for usefulness. Hence it is also that there have come into existence two collateral series of labor laws and regulations—those dealing with the factory population on the one hand, and those regulating the relationships of guild masters, their journeymen and their apprentices on the other. Other laws, bearing on subjects of common interest, apply equally, of course, to both classes of workers.

The fundamental charter of labor rights in Germany is the industrial code (*Gewerbeordnung*). Enacted originally in 1861

for the North German confederation, the code was appropriated bodily as an imperial law by the constitution of the new empire in 1871, and by the beginning of 1873 it had been extended in practice to all the states, Alsace-Lorraine, however, being exempted until 1889. Since then a score or so of amendments (*Novellen*) have been introduced, alike by addition, modification and omission, the principal changes following the thorough-going revisions of the code in 1883 and 1891, the latter as a consequence of the Berlin Labor Conference of the preceding year. In truth the revolution in industry which followed the establishment of the empire and the striking stimulus which was then given to the nation's mercantile life and enterprise made many of the provisions of the first code inadequate, while the altered conditions of production and labor called for a multitude of new regulations in the interest of the welfare and the convenience of the workers. Thus among the subjects of legislation which have been added to the code in later years are the restriction of Sunday work, the limitation of the employment of female and juvenile workers and the protection of the workman's life, limb and health.

But the industrial code is by no means the great charter of the factory workers only. Primarily, indeed, these were not the special objects of its concern. Originating at a time when factory labor had not secured the dominant position which belongs to it at the present day, it was the older economic relationships—the relationships between the master craftsman and his journeymen and apprentices—which it sought to regulate and control, and the factory working classes were included within its survey just where the conditions of service were sufficiently identical. It is noticeable, however, that even down to the present time there are large classes of employees who are in some respects beyond the scope of the industrial code and whose principal rights are secured by other and particular laws. Such are shop employees, both assistants and (in most matters) apprentices, seamen,¹ miners, state and municipal servants, railway employees, employees in state workshops, workpeople connected

¹ The code applies to all employees in inland navigation save in so far as they are affected by a special law of June 15, 1895.

with gas and water works, agricultural laborers and domestic servants. Nevertheless, it is to the industrial code that we must go for a typical picture of the legal status of labor in Germany under normal conditions.

The code does not say what classes of employees exclusively rank as "industrial workpeople." It does, indeed, specify certain classes as covered by this term—journeymen, assistants, apprentices, officials of works (*Betriebsbeamte*), overseers, technical employees² and factory operatives—and it defines "industrial workpeople" as those who "are in the service of an independent conductor of an industry (*Gewerbetreibender*) and whose labor is devoted to industrial purposes on his behalf," but it does not draw definite lines.

It is questionable, for example, whether houseworkers are to be counted as "industrial workpeople." The question of who is and who is not an "industrial workman" has given rise to constant disputes in the industrial courts, and a multitude of decisions have been promulgated, not everyone of which, by any means, has had the effect of producing clearness and certitude.

The contract of service.—On the subject of the labor contract, the basis of the economic relationship between employer and employed, the civil code and the industrial code contain the following provisions:

By the service contract (*Dienstvertrag*) the one who undertakes service is obliged to perform the promised service and the other is obliged to grant the recompense agreed upon. Services of every kind may be the object of the service contract. [Civil code, sec. 611.]

The determination of the relationship between the independent conductors of industry and the industrial workpeople is, subject to the limitations imposed by imperial law, matter of voluntary agreement. [Industrial code, sec. 105.]

While in general employer and workman are thus left to make whatever contracts they please, certain claims on the former's part and certain obligations on the latter's are excluded, owing

²The term *Techniker* covers all employees in industrial concerns, whose duties presuppose special technical training; as, for example, chemists, draughtsmen, mechanical engineers, building engineers, etc.

to the recognition by German law of the fact that the workman, though theoretically free and independent, is not always so in practice, and contracts which infringe these prohibitions are not valid in law. The contract is also rendered null and void in the case of misrepresentation, deception or intimidation, and equally when it is against public order or when there is evident disparity between the reciprocal terms of the agreement, owing to the need, inexperience or thoughtlessness of either of the contracting parties.

In factories and the larger workshops a labor contract form (*Arbeitszettel*) is used, but small handicraftsmen and other employers do not as a rule put their agreements with their employers on paper. Some of the courts of industry have issued model forms of contract which they recommend for adoption. The following is in constant use at Leipzig, having been issued by the court of industry there:

Labor Note (Arbeitszettel)
concerning the service contract between

Employer and
Workman

It is agreed :

Entrance into service
Rate of wages
Mode of payment
Kind of work
Hours of work
Reciprocal term of notice
Remarks
(To each of the signatories a copy has been handed)
(Town) (date).
Employer (signature). Workman (signature).

Supplement for alterations :

(Town) (date).
Employer (signature). Workman (signature).

The local courts of industry recognize as binding for an in-

dustry wages agreements, known as "wages tariffs" (*Lohn-tarife*), agreed upon between organizations of employers and workpeople, and it has been ruled that where workpeople are transferred from one employer to another, as in the case of a business changing hands, the old agreement holds good in the absence of a new one.

The industrial code, section 114a, provides that the Federal Council may prescribe for specific industries either labor notes or wages books (*Lohnbücher*), wherein must be set forth the character and the extent of the work to be done, the rate of wages, and the conditions as to providing the workpeople with materials and tools. These notes or books must be supplied by the employer to the workpeople free. In factories to which this regulation does not apply (section 134) wages books must be supplied to all workmen under age. On every pay day must be entered the amount earned, and the book must be handed to the worker at the time, yet returned to the employer before the next pay day comes around. According to section 113 of the industrial code a workman can, on leaving his employment, require a certificate (*Zeugniss*) of the character and duration of his employment, and also, if he is so minded, a testimony as to his conduct and capacity (*Leistungen*). In the case of workers under age the same certificates can be demanded by their legal representatives.

The determination of service—The period of notice on either side, according to section 122 of the industrial code, is fourteen days in the absence of other agreement, and the notice may be given as from any day. Where there is a definite agreement on the subject, whether the period be one week or two, it is usual for the notice to date from the first day of the working week.

The employer who has engaged a workman as from a given time is bound either to set the man to work then or to recompense him for the time lost at the rate agreed upon. Nor is it necessary that the workman shall report his readiness to begin work; he fulfills his part of the contract if he merely places himself at his employer's convenience and call. If no specific rate of wages has been agreed upon, the rate usual for the task

that was to have been performed must be taken as the basis of recompense. The workman cannot be required to make up time lost owing to the employer's default. On receiving notice to appear he may comply or not; but if he declines he can only claim recompense up to the time when he should have begun to work. Where an employer by refusing to carry out a contract of service causes the workman special expense, as in travelling to another town, he must refund that expense as well as the man's lost wages.

If, on the other hand, a workman culpably fails to begin work at the time specified, or leaves work without notice, the actual damage suffered can be recovered from him, or otherwise the penalty for breach of contract which is prescribed by the industrial code (section 124b) and which is independent of proof of damage, *viz.* a day's wages of a day laborer for every day of default up to a maximum of a week. Where another employer is the cause of the default, or where he has engaged a workman knowing him to have broken his contract, damages may be recovered from the later employer as well (section 124c). The same claim to compensation is possessed by the workman against his employer under similar circumstances.

The civil code has a special provision (section 624) intended to liberate a workman from long engagements. Should an engagement be concluded for a longer term than five years, it may be determined after the expiration of five years. Such arrangements, particularly life-long arrangements, are held to presuppose a dependence which is in conflict with the legal principle of freedom of contract.

Section 616 of the civil code provides that an employee engaged to do certain service does not forfeit the recompense due for that service if he is prevented by some personal reason implying no fault on his part from attending to his work for a "relatively inconsiderable time" (*verhältnissmäßig nicht erhebliche Zeit*). It has been decided, however, that this stipulation can be cancelled by contract between the two parties. The commercial code, section 60, goes further in the case of shop assistants, saying: "Should a shop assistant be prevented by inculpable misfortune from temporarily discharging his duties,

he does not forfeit his claim to salary and maintenance, but he can claim these only for a period of six weeks." The grounds that entitle a workman to claim his wages though absent must in any event be quite personal—such as military duties, the exercise of electoral rights, citation as witness in the public courts, sickness, domestic emergencies (deaths, childbirth, sudden sickness)—and there must be no fault on his part. If notice be given to the employee because of his illness, the employer's responsibility nevertheless continues until the period of six weeks has expired, if the illness last so long. Liability does not exist, however, when provision is made for medical treatment by insurance or by nursing in a public institution. Where legal proceedings are taken, the validity of a cause of absence is decided by the courts in every individual case on its merits, though most disputes turn on the question what is a "relatively inconsiderable time."

Protection of life and health.—The industrial code, section 120a, provides that the buildings, rooms, machinery and appliances in or with which a laborer works must be so devised or arranged as to afford protection against danger to life and health so far as the nature of the occupation allows. Where a worker lives with his employer this provision applies no less to the sleeping apartments. By workroom is meant not merely the place in which a workman passes the bulk of his time, but every part of the building in which he is engaged and also the grounds and accommodations attached thereto. So, too, the phrase "machinery and appliances" is to be understood in the fullest sense as including every apparatus and convenience, of whatever kind, which is used by hand or otherwise in the process of work. As, however, an employer's responsibility only applies to the buildings over which he has control, he incurs no obligation in regard to the rooms in which houseworkers are employed. Where a workman lives with his employer, the latter must provide dwelling and sleeping accommodation healthy as to space, light and ventilation, with ample food; the hours of work must not be excessive, and due regard must be paid to the satisfaction of moral requirements and of religious needs (*e. g.* opportunity must be given for attending religious ministrations). Where

proper precautions are not taken, an employee may leave his employment without notice and claim damages as for dismissal without notice. It follows also that where due security for life and health is lacking, the employer is liable for compensation in the event of injury. Section 842 of the civil code provides that "the obligation to make compensation on account of a tort (*unerlaubte Handlung*) against a person extends to the disadvantages which the tort entails as regards the earnings or the welfare (*Fortkommen*) of the individual injured." Where the worker's earning power is destroyed or diminished or his needs are increased by reason of injury to body or health, not only must the cost of treatment be defrayed, but a commensurate annuity in money must be paid. If, however, it is shown that the injured person has adequate means of support, he can claim a single capital payment instead of an annuity. In the event of death the costs of burial must be defrayed; and if the deceased were responsible for the support of dependents there must be paid to the latter an annuity equal to the value of the support the deceased would have been obliged to give during the probable period of his life; and this applies to a child still unborn at the time of its parent's death. Annuities are payable three months in advance. In fixing the degree of injury and the amount of compensation, regard has to be had to all circumstances which by reason of the culpable act affect the injured person physically; thus, in the case of women, the diminished prospect of marriage. This section also applies to injuries to personal honor in so far as material damage can be shown. How far an employer is liable for damages when an injured workman is entitled to compensation under the several industrial insurance laws depends upon the special provisions of these statutes. In general, however, where compensation for accident to body or health is claimable under the accident insurance law (which imposes the whole cost of insurance upon the employer), the provisions of the civil code do not apply, and instead of damages pension is given. Here the court has to determine whether due security for regular payment exists; and here again, if sufficient cause be shown, the pension may be converted into a single capital payment. Moreover, a husband has a claim for

compensation for his wife's injury or death by accident where she was in the habit of rendering personal services which must henceforth be performed by others, and the same applies where a child is injured or killed. Here the compensation takes the form of a pension, which ceases when the survivors of the deceased die.

All these provisions for compensation leave untouched the penalties which under the penal law fall upon persons who by their culpable negligence cause injury or death to others. In the case of injury the penalty may be a fine not exceeding 900 marks or imprisonment up to three years, and in the case of death imprisonment up to five years. Indemnity may be claimed under the penal law up to 6000 marks, in which case no further claim for compensation can be made.

The preservation of morals.—Section 120b of the industrial code requires employers to adopt all measures and to issue all regulations which are necessary to the preservation of decency and good morals among their workpeople. In particular the sexes must be separated as far as the nature of the work allows, unless the interests of morality are sufficiently protected otherwise, but the separation applies unconditionally to places of convenience, like washing and dressing places, etc. A wide latitude is allowed to the Federal Council in regard to the issuing of regulations on this head applicable to entire industries, although when the Federal Council does not issue such regulations the executives of the individual states may do so instead. In industries in which excessive hours of work are specially dangerous to health, the Federal Council may prescribe the duration, the beginning and the end of the daily work, and the pauses to be allowed. It is provided, however, that before regulations of this kind are issued by state executives and police authorities the opinion of the employers' organizations in the trades affected (*Berufsgenossenschaften*) shall be invited.

The protection of juveniles and children.—The industrial code distinguishes three classes of workers under age—juniors (*Minderjährige* or *junge Leute*), juveniles (*jugendliche Arbeiter*) and children. The age of childhood is legally held to be passed at fourteen years; from the age of fourteen to sixteen the worker

is regarded as a "juvenile;" and from sixteen to eighteen he is classed as a "junior" or "young person." The employment of children under thirteen years is prohibited in factories (*i. e.* work-places in which at least 20 workpeople are employed and in which either machine power is used or division of work exists) and equally in workshops in which machinery driven by "elementary power" (steam, water, wind, gas, air, electricity, etc.) is permanently used. Between the ages of thirteen and fourteen, children may be employed in factories and workshops only when they are no longer obliged to attend school. Up to this age children can at the most work six hours daily, and a pause of at least half an hour must be allowed. Further, by a law of May 30, 1903, regulating the employment of children in "industrial concerns" (children being defined in this law as "boys and girls under thirteen years as well as such boys and girls over thirteen years as are still liable to attend school,") the employment of these children is forbidden in building works of all kinds, brickworks, quarries and pits worked from above ground, stone-breaking, chimney-sweeping, carting in connection with carrying businesses, the mixing and grinding of colors, work in cellars, and in a number of scheduled workshops. Children under thirteen years may not be employed between 8 p. m. and 5 a. m. and not before forenoon school. They may work only three hours on school days and during school holidays only four hours. At noon a pause of a least two hours must be given, and in the afternoon the work may not begin until an hour after school time. (It should be explained that afternoon school is unusual in Germany.) Children may not be employed in theatrical and other public performances, but exception may be allowed in the case of performances in which the "high interests" of art and science can be shown to be served. In licensed premises children under twelve years may not be employed at all, and girls under thirteen or still liable to attend school may not be employed in the serving of guests; and the conditions as stated above as to hours and rest hold good. Children may not be employed on Sundays and festivals, save exceptionally and under conditions. Children cannot be employed at all, until labor cards have been obtained for

them from the police authority. The same provisions in the main apply to the children of employers.

Child and juvenile labor (juveniles, as explained above, are persons between fourteen and sixteen) is either severely restricted or altogether prohibited in the making of alkali-chromates, in any process which would bring them in contact with lead or lead combinations, in sugar factories (many restrictions), cigar factories, chicory factories, wire-drawing works in general, in certain departments of glass-smelting works and glass-cutting works, in certain operations in rubber manufacture, heckling rooms, dress and linen-making workshops, horse-hair spinning works, quarries, coal mines, brick works, zinc-smelting works, rolling works and forges, and certain departments of match factories. Juvenile workers can be employed in metal or rolling works and forges, glass furnaces, coal mines and zinc-smelting works, only when they receive medical certificates that such employment would be free from injury to health, which certificates can be issued only by doctors accredited for the purpose by a government authority.

The house industry is exempted from these regulations save in so far as machine power is used.

Juveniles may not be employed in factories longer than ten hours daily (section 135 of the industrial code). Their work may not begin before 5:30 a. m. nor extend beyond 8:30 p. m. Regular pauses must also be given: where a juvenile works only six hours a day the pause must be at least half an hour; in other cases at least half an hour each in the forenoon and afternoon and an hour at noon, unless the work does not exceed eight hours a day and four hours at a stretch, in which case the two half-hour pauses may be omitted. Juveniles may not be employed on Sundays, festivals, or in hours fixed by their "proper pastor" (*ordentlicher Seelsorger*) for catechism teaching and preparation for confession and communion. Special conditions as to the time and the duration of the pauses apply to many occupations; and night work (between the hours of 8:30 p. m. and 5:30 a. m.) is entirely forbidden in the case of juveniles in most of these occupations, save under severe restrictions. The penalty for any infraction of the provisions as to

the employment of juvenile workers is a fine up to 2000 marks or imprisonment up to six months.

Employers are required (section 120 of the industrial code) to afford to "young people" (*i.e.* persons under eighteen) the opportunity of attending continuation schools, but instruction must not be given on Sundays during the principal hours of public worship. Communes or communal unions are given power to make attendance at continuation schools compulsory (as is the case in Berlin) for male workers and for female shop assistants and apprentices under fifteen years, where compulsion does not exist by the law of the land. Exemption from attendance at these schools is, however, given to the scholars of guild or other voluntary continuation or technical schools of equal educational value. Not only must time be given when school hours fall in the ordinary work time, but the worker may not be required to make up the lost time, and where the continuation school is compulsory the employer must himself see that his juvenile workers attend. The penalty for default in any of these particulars is a fine not exceeding 20 marks or detention up to three days.

The position of women.—Section 137 of the industrial code regulates the employment of women. Female workers may not be employed in factories during night hours from 8:30 to 5:30, nor on a Saturday nor on the eve of a festival after 5:30. Such workers may not be employed more than eleven hours a day, and on Saturdays or the days preceding festivals not more than ten hours, and a noon pause of at least an hour must be given. Female workers who have charge of a house must, on their request, be allowed to go home half an hour earlier at noon, unless the noon pause be at least an hour and a half. Women may not be employed for four weeks after confinement, and through the following two weeks only on certificate of an approved doctor permitting it. In times of exceeding pressure the local governing authority may, on the request of an employer, permit the employment of female workers over sixteen years until 10 p. m. on week days (except Saturdays) for two weeks at once, with the restriction that the daily work time shall not exceed thirteen hours and that this extension of hours shall

not be for longer than forty days in one year. Permission to work extended hours for a longer period than two weeks at one time or for more than forty days in one year can be given only by a higher administrative authority, and then with the condition that the average daily duration of work all the year round shall not exceed the statutory number of hours. The same authority may authorize the employment of female workers over sixteen, who have no housework to do and are absolved from attending a continuation school, in certain urgent work on Saturdays and the evenings before festivals until 8:30, and special latitude is allowed when work is interrupted by "natural occurrences" (*Naturereignisse*) or by accidents. Power is reserved to the Federal Council to prohibit entirely or to restrict by special regulation the work of females in branches of manufacture which are attended by special danger to health or morality, also to vary the incidence and duration of the pauses and to prolong and readjust the hours of work where the conditions of manufacture require it. But the employment of women is wholly or partially forbidden on grounds of health in the same undertakings and processes which are by statute closed to juveniles.

The employment of men.—The work hours of men are subject to fewer restrictions, and a maximum workday is prescribed in special cases only. The minimum is fixed below the usual period only in employments dangerous to health, or where from the nature of the employment the customary number of hours is excessive. And yet, though the work hours of men have been left to bargaining, the effect of the restriction of female and juvenile work has resulted to the interest of adult male labor, while the industrial organizations have successfully agitated in isolated branches of work for a ten-hour day and here and there even for a day of eight hours, though legislation on the subject is as remote as ever.

As to labor in public shops and similar places of business (*offene Verkaufsstellen*), section 139c of the industrial code provides that an uninterrupted rest of at least ten hours must be given at the end of the day to assistants, apprentices and workpeople; that in towns of over 20,000 inhabitants eleven hours must be

given where two or more assistants and apprentices are employed, and that in smaller places the longer period of rest may be prescribed by local statute. A suitable (*angemessene*) pause must be allowed for the noon meal, the minimum being one and one-half hours where the meal is partaken of outside the place of business. These provisions do not apply, however, to licensed premises, for these are not ranked as "public places of sale"; nor do they apply to baker's and butcher's assistants and domestic servants; but they do apply to porters, market attendants, *etc.* The curtailment of the time of rest is permitted in the case of labors which are necessary to prevent injury to goods; in the case of statutory inventory taking, renovations and removals; and in addition for a maximum of thirty days in the year in the case of employees generally, the days being fixed by the local police authority, either universally or for single trades.

Shops must be closed between the hours of nine p. m. and five a. m., though buyers present at the closing time may be served. An extension of time to ten p. m. is allowed on forty special days in the year, and otherwise under exceptional circumstances. On the petition of at least two-thirds of the tradespeople concerned, in a commune or several adjacent communes, the higher administrative authority may order the closing of shops between five and nine p. m. and five and seven a. m., either at certain seasons or the whole year through; and on the petition of one-third of the tradespeople the authority may take a vote on the question.

Sunday work.—While it is the aim of industrial legislation to secure to the working classes the fullest possible Sunday rest, the laws of the states as a rule regulate the observance of Sunday from a religious standpoint. By sections 105a to 105i of the industrial code, industrial employers cannot require their workpeople to work on Sundays or festivals. The days to be observed as festivals vary according to the confessional character of the state—whether Protestant or Roman Catholic by preponderance—and are determined by state laws as distinguished from imperial laws. The only exceptions are works of urgency and necessity, depending on the technical character of the in-

dustry and on the character of its products, and here the workmen have no option. Licensed premises, theatrical and musical performances, exhibitions, and the various means of communication (railways, waterways, post, etc.) are excluded. On the other hand an employer cannot require a workman to play on days which are not statutory holidays. Where a Jew had closed his works on a Jewish high festival his employees succeeded in obtaining compensation for lost wages. In general, the rest to be secured to employees in factories, workshops and the like must be at least twenty-four hours for every Sunday and festival, for consecutive Sunday and festival thirty-six hours, and for the Christmas, Easter and Whitsunday festivals forty-five hours. The rest is to be reckoned from twelve p. m., and where Sunday and a festival fall together it must last until six p. m. of the second day. In works with regular day and night shifts, the rest may begin at the earliest at six p. m. of the preceding work-day and at latest at six a. m. of the Sunday or festival respectively.

In shops and warehouses assistants, apprentices and workpeople may not be employed on the first day of the Christmas, Easter and Whitsun holidays, and mechanics not longer than five hours on Sundays and festivals. Exceptions both in the nature of curtailment and extension of the rest may be enacted in special cases. The prohibition of Sunday work applies to hand industries only where these are carried on in workshops.

Factory regulations.—It is required by section 134a of the industrial code that a labor order (*Arbeitsordnung*) shall be issued in every factory in which twenty or more workpeople are employed, and this order must be exposed to view. It must contain a statement of the hours of work, the pauses, the time and mode of settlements and of payment of wages, the conditions of leaving and discharge, the fines (if any), their kind and amount, and the purposes to which they are applied. Before a labor order is issued or amended, the workpeople of age must be consulted. Where workpeople's committees (*Ausschüsse*) exist, their opinion must be taken instead.

Workpeople's committees.—The formation of these committees is permissive. They may be elected *ad hoc*, or be

formed of the executives of the factory sick funds or other funds carried on in the interest of the workpeople, where a majority of the members of these executives are workpeople elected by their fellows. It is the purpose of the committees to act as a means of communication between employers and employed and to represent the interests of the latter in negotiations concerning the issue of workshop rules.

The truck system.—Sections 115 to 119 of the industrial code forbid "payment in kind" except food at cost price, housing and use of land at the local rent, fuel and light, regular sustenance (*Beköstigung*), medicine and medical attendance, and tools and materials required in the work, these being supplied at the cost price. The impounding of wages is also forbidden in the case of private individuals.

In the event of the insolvency of an employer, the wages of his workpeople for an antecedent period of twelve months constitute a preferred claim on his estate.

Apprenticeship.—Special provisions are introduced in the industrial code relating to the apprentices of tradesmen and handicraftsmen (sections 126 to 133). They contain regulations for the proper training of apprentices, for their physical and moral welfare, as well as for journeyman and master examinations in the case of handicrafts.

The inspection of factories.—Finally, it is to be noted that it is the duty of the factory inspectors to see to the due observance of most of the provisions of the industrial code. Though no law expressly requires it, many of these officials endeavor to cultivate personal contact with the working classes, with a view to assuring themselves more fully that the regulations and measures provided for the protection of labor are faithfully complied with. Since 1890 the factory inspectors have been authorized to supervise not only factories and workshops but all places of industry (*Gewerbebetriebe*) and handicraft (*Kleingewerbe*), but not places of business (*Handelsgewerbe*), the latter falling under the jurisdiction of the local police authority.

Insurance against sickness, accident, old age and invalidity.—With few exceptions the industrial wage-earners of Germany are compulsorily insured against the four-fold risk of

loss of earning power by sickness, by accident, by old age and by permanent invalidity from any cause whatever. To other classes of employees who are not compelled to insure, the right to do so may be extended by municipal decree or communal resolution.

Where insurance against sickness is obligatory, it begins with the employment of the worker and is independent of age and sex. Even children who are still of school age but who regularly work during a portion of the day may be insured. The insurance is broken, however, when employment ceases, to be renewed when employment begins again. The law provides for a minimum benefit, which consists of free medical attendance and medicine, with spectacles, bandages and surgical appliances, from the beginning of sickness; and in the event of incapacity for work, sick pay to the extent of half the daily wages on which the contributions have been based. The first two days of sickness are called "waiting" days, and during this time (*Karenszeit*) no pay is given, though the waiting time may be disregarded if the members of the sick fund are so minded. The longest period for which sick pay is granted is twenty-six weeks, after which, should incapacity continue, the liability is transferred to the accident insurance fund, though medical attendance may continue for a year. The sick pay is, as a rule, for workdays only, but it may be claimed for Sundays and festivals when employees are liable to work on those days. A council may also decide to pay for every day in the week. The basis of contribution and benefit is ordinarily either the wages of local day labor or the average wages of the industry or trade to which the insured workpeople belong, with a maximum of four marks per day, so that the sick pay cannot exceed two marks daily unless the insured are divided into classes according to their earnings, when the actual mean wages of each class are taken as a basis, with a maximum of five marks, and the benefit may amount to 2.50 marks. Special benefits are secured to women in childbirth, and funeral money also is paid. Nursing may be given in hospital instead of sick money, though even then an allowance may be made to the family. The contributions are paid to the extent of two-thirds by the insured and one-third by their employers. In the case of communal sick funds, the

workpeople's premiums may not as a rule exceed one and one-half per cent of the local wages of day laborers, but an increase to three per cent is permitted where the unsatisfactory condition of insurance funds require it. In the case of the organized compulsory funds, the premiums may not as a rule exceed three per cent of the wages taken as the basis of contribution, whichever method of calculation be adopted, so long as the relief granted does not exceed the minimum. When a higher scale of relief is given four per cent of the wages may be levied. In every case the employer pays one-half as much as his workpeople. By permission of the higher administrative authority the contributions may be graduated according to "danger classes," save in communal insurance. No premiums are payable as long as sick relief is received. The workpeople have a large share in the management of the sick funds, except in the case of communal funds, where the local administrative body takes entire charge and entire responsibility.

The accident insurance laws embrace in general all kinds of employment to which sickness insurance applies and some others, and here too extensions are allowable. The employees are divided into "danger classes," and the premiums levied are fixed accordingly in a "danger tariff." The workman makes no contributions; the employer bears the whole liability. The compensation payable in case of injury begins only at the expiration of thirteen weeks after the occurrence of the accident, the sick fund or the individual employer being responsible in the interval; after that time the trade association provides all requisite medical attendance, medicine and other curative treatment, and also pays a weekly pension (*Rente*) so long as incapacity lasts, the amount depending on the yearly earnings of the injured person and the degree to which his earning power has been depreciated. The year's earnings are taken at 300 times the average daily wage, though where from the nature of his occupation a man works either more or less than 300 days this number is increased or decreased accordingly. The full pension (*Vollrente*) is two-thirds of the yearly wages so computed; and this is given in case of complete incapacity to work. A smaller percentage is given where the earning capacity is not completely

destroyed; thus, where the earning capacity is diminished by one-half, 50 per cent of the full pension or one-third of the yearly earnings is given. In place of free attendance and a pension, an injured man may be given gratuitous treatment at a hospital, and then the nearest relatives receive the same pension to which they would have a claim in case of the man's death; but the trade association may at its discretion grant even more than this. Should death follow as the result of accident, "death money" is paid, to the extent of one-fifteenth of the yearly earnings, with a minimum of 50 marks, together with pensions to the relatives not exceeding in the aggregate 60 per cent of the deceased's earnings.

The obligation to insure against old age and invalidity is imposed on workers who have completed their sixteenth year and work for wages or salary, and no fixed period of employment is necessary as a prior condition. The receipt of a pension depends on three conditions: the payment of the prescribed statutory contribution, the observance of the prescribed "waiting time" of 200 weeks in the case of an invalidity pension and 1200 weeks in the case of an old age pension, and the occurrence of inability to earn a livelihood at the prescribed age of qualification, *vis.*, the completed seventieth year. There are three contributions: equal payments by the employer and the insured workpeople and a subsidy of 50 marks by the empire towards every pension granted. The premiums are payable for every week of work, and the insured are divided into five wage-classes, for which the weekly premiums (payable half by the worker and half by the employer) are:

1st class,	up to	350 marks,	14 pfennigs
2nd "	350 to	550 "	20 "
3rd "	550 to	850 "	24 "
4th "	850 to	1150 "	30 "
5th "	over	1150 "	36 "

The class to which a man belongs does not depend on his actual yearly earnings; the usual basis is 300 times the daily wages of the class of work insured, but the earnings may be computed differently. The premiums are levied in the form of stamps is-

sued by the various insurance institutions, by post offices and by special sale agencies. These stamps are affixed to receipt cards, which the insured is bound under penalty to keep. The cards have places for fifty-two or more stamps, and must be exchanged for new ones when filled up. As a rule the employer deducts the premium weekly, and when wages are paid the stamps must be affixed for the time covered by the wages or otherwise as may be provided. The invalidity premium is an initial sum of 60 marks for the first wage-class, 70 marks for the second, 80 marks for the third, 90 marks for the fourth and 100 marks for the fifth, with an imperial subsidy of 50 marks in each case, making 110, 120, 130, 140, and 150 marks respectively. This, however, is the minimum, and the pensions may be increased according to the duration of contribution, until they reach a maximum (after 50 years) of 185, 270, 330, 390 and 450 marks in the five classes. When an insured person is sick, so that inability to work is apprehended, the insurance institution may incur in his behalf the cost of curative treatment and may, with his consent, send him to a sanatorium or convalescent home, and while he is there half sick-pay may be granted.

The old age pension may be claimed on the completion of the seventieth year in case the other conditions have been complied with. It consists of the imperial subsidy of 50 marks plus 60 marks in the first wages class, 90 marks in the second, 100 marks in the third, 150 marks in the fourth and 180 marks in the fifth, making together 110, 140, 170, 200 and 230 marks respectively. All pensions are paid through the local post offices.

The trade guilds.—While many of the rights of employees in handicrafts and trades other than those embraced in factory industry are affirmed in statutes common to the entire wage-earning class, as has been seen in the foregoing review of the industrial code and the insurance laws, the organization and regulation of the modern trade guilds are matter of special legislation.

The purposes of these guilds are: (1) the cultivation of *esprit de corps* and the maintenance and strengthening of class dignity (*Standesehre*) amongst members; (2) the furtherance of a

friendly relationship between masters and journeymen and the provision of lodging-houses for travelling workmen and of a system of labor registration; (3) the regulation of the apprenticeship system and care for the technical, industrial and moral training of the apprentices; (4) the determination of disputes between the members of the guilds and their apprentices by courts of arbitration; and (5) the establishment of funds to provide insurance against sickness, accident, old age and invalidity—this, however, in conformity with the general insurance laws.

Membership in a guild is confined to the following classes of persons: (1) those who carry on independently within the district of the guild a trade of the kind for which the guild is formed; (2) those who are employed as overseers or in a similar capacity in a large undertaking belonging to the said trade; (3) those who have been members under the foregoing definitions, but have ceased so to be, and who carry on no other industrial occupation; and (4) handicraftsmen (*Handwerker*) employed for wages in agricultural or industrial undertakings. Other persons may be admitted to honorary membership only. A guild court of arbitration (*Schiedsgericht*) must consist of at least a president and two assessors, the latter as well as their deputies being taken in moieties from the members of the guild and from the journeymen and workmen in their employ. The president is nominated by the controlling authority and need not be a member of the guild. A court must come together within eight days of a request for its mediation, failing which the petitioner may resort to the industrial courts (*Gewerbegerichte*) or to the ordinary civil courts. Decisions of these guild courts, as of the guild itself, acquire force of law (*Rechtskraft*) unless within a month one of the parties concerned should appeal to the "ordinary court." In certain disputes, and where the judgment does not exceed 100 marks, the decision may be executed at once unless it can be shown that the debtor would be seriously injured, and it may also be suspended when security is given. It is also provided (by section 100 of the industrial code) that for the protection of the common interest of handicrafts of an identical or cognate kind the higher administrative authorities may, on the petition of a majority of those concerned, order

the formation of compulsory guilds, to which all the correlated handicraftsmen of the district must belong.

Industrial courts of arbitration.—The boards of arbitration which exist in connection with the trade guilds are comparatively restricted in jurisdiction, beneficial though their conciliatory work is. Wider in scope are the industrial courts which have been created under the law of July 29, 1890 (*Gesetz betreffend die Gewerbegerichte*), and which now form an invaluable part of the machinery of industry, facilitating harmonious relationships in many cases where formerly the only medium of adjustment was the ordinary civil court.

The industrial courts may be formed either by the communes (*Gemeinden*) or the communal unions (*Kommunalverbände*) for the districts under their jurisdiction. Where a court is not so established employers and workpeople (either or both) may set the law in operation by requisition to the communal or provincial authorities; and where these authorities fail to act, the higher administrative organs of the state may intervene to compel the application of the law.

These tribunals are competent to deal with disputes between employers and employed regarding (a) wages questions, (b) deductions and fines by reason of defective work, (c) terms of notice on both sides, (d) the giving of certificates, (e) the sick-money payable by workpeople, and (f) disputes which may arise among workpeople in regard to work done in common. Where the matter in dispute does not exceed 100 marks in value, the decision of the industrial court is final, and only in the case of larger amounts is appeal to the ordinary courts of law permissible. A great recommendation of these courts is the cheapness of procedure. There is but one fee, as follows:

For claims of 20 marks and under,	1 mark;
" " 20 to 50 marks	1.50 marks;
" " 50 to 100 marks	3 marks;

and afterwards three marks per 100 marks up to a maximum of 30 marks. It is, however, within the power of local authorities to make the courts free.

A further function of the industrial court is that of a board

of conciliation (*Einigungsamt*). The constitution of such a body is the same as that of the ordinary court—a president and at least four other members, two being employers and two workpeople. Parties privy to a dispute are ineligible for election. Here the judicial powers of the court do not apply; as a board of conciliation the court can only endeavor to bring discordant views into harmony.

The law regarding strikes.—In judging of the liberty which the working classes of Germany enjoy to further their interests by the method of the strike, it is not sufficient to give the bare letter of the law. So much depends on the application of the law by the judges and such a variety of interpretation and usage prevails, that it is only by the examination of judicial decisions that the actual state of the law can be learned.

There exists no legal right to proclaim an embargo upon an industrial concern in which employer and workpeople are in conflict; and while it has been found that the same end can be attained by the employment of ingenuity in phrasing, there have been frequent convictions of labor leaders who have openly "boycotted"—the word has long been introduced in the German vocabulary of labor—employers through the press. The mere threat of a strike or "boycott" in the eventuality of an employer not falling in with conditions proposed by his workpeople has been punished as a misdemeanor under section 253 of the penal code, which provides:

Whoever constrains (*nötigt*) another by force or threat to any act, toleration or omission (*Handlung, Duldung oder Unterlassung*) in order to procure for himself or a third party an illegal pecuniary advantage (*rechtswidriger Vermögensvortheil*) is punishable with imprisonment of not less than a month. The attempt itself is punishable.

Courts of law have in isolated cases interpreted the summary demand of higher wages as an endeavor to procure an "illegal pecuniary advantage"; and, what is less singular, workpeople have been committed for having appealed to their colleagues in open meeting to cease work without giving notice. In the latter case the offence alleged has been the incitement to illegality in the form of breach of contract, bringing the workers into

conflict with section 110 of the penal code, which prescribes a fine not exceeding 600 marks or imprisonment up to two years by way of punishment. It does not appear, however, that breach of contract as such entails punishment. It may, however, justify a compensatory fine, under sections 119a and 124b of the industrial code, which provide that where an employee leaves work illegally, the employer may retain a week's wages at the most by way of indemnity (*Ersatz*), in which case no further claim for damages may be made under the civil law.

The method of exclusive dealing is largely resorted to by the working classes in the assertion of their economic claims and in the prosecution of their perpetual endeavor after class solidarity. In general the law has tolerated the tacit and unacknowledged "boycotting" of employers and of public places of assembly (like meeting halls and licensed premises) obnoxious to the workers; though, here too, there are exceptions according to the law of the various states and the interpretation of the law by different tribunals of first instance.

A full consideration of the law of coalition and public meeting would carry us into the domain of politics. It may be said, however, that a valuable franchise is secured to the majority of wage-earners (not, however, to agricultural laborers, domestic servants and several other classes of employees) by section 152 of the industrial code, which declares:

All prohibitions and penal regulations against industrial employers, industrial assistants, journeymen or factory operatives regarding agreements and combinations for the purpose of obtaining more favorable conditions of wages and of work, particularly by means of the suspension of work or the dismissal of workpeople, are repealed.

This right to combine for economic ends does not, however, extend to political action, in regard to which the restrictions are, in most German states, very severe. Not only so, but trade coalitions are hampered at every turn, owing to the arbitrary way in which the police proceed against organizations of this kind as illegal political combinations.

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THE PHILIPPINES AND THE FILIPINOS.¹

If mere quantity of printed material would suffice to bring about a general consensus of public opinion regarding the Philippines, the Filipinos and everything connected with our "Philippine problem," we ought to have reached such a stage long since. Unfortunately, however, the very quantity of matter printed, as well as the contradictory character of much of the evidence presented, has helped to bring about a very considerable confusion of ideas. One of the evils of our Philippine experience has been that news and information and discussion have come like epidemics. Let two or three or more editors of periodicals seize upon some sensation of the moment, and the rest of the flock are moved to seek instantly for material to print along the same line—often without regard for its source and character. The past year and a half has brought forth too, an unusual proportion of treatises upon the Philippines. We are forcibly reminded that our Philippine governmental undertaking is no longer a mere infant by the rather comprehensive criticisms made of it by Mr. Alleyne Ireland, an Englishman, and Professor H. Parker Willis, an American citizen. Some of their criticisms go to the very foundation of our new structure of Philippine government. That government has had no really careful criticism before; hence there is a marked tendency among the opponents of American rule in the Philippines to accept these arraignments as authoritative. The charges now brought against it of extravagance and inefficiency—by Professor Willis, of tyranny also—therefore merit special attention.

¹ The Far Eastern Tropics. By Alleyne Ireland. New York, Houghton, Mifflin & Co., 1905.—vii, 339 pp.

Our Philippine Problem. A Study of American Colonial Policy. By Henry Parker Willis. New York, Henry Holt & Co., 1905.—xiii, 479 pp.

Labor Conditions in the Philippines. By Victor S. Clark. Bulletin of the Bureau of Labor, no. 58. Government Printing Office, Washington, May, 1905.—185 pp.

A History of the Philippines. By David P. Barrows. New York, American Book Co., 1905.—332 pp.

Philippine Ethnological Survey—Vol. i: The Bontoc Igorot. By Albert Ernest Jenks—Vol. ii: The Negritos of Zambales, by William Allen Reed; The Nabaloi Dialect, by Otto Scheerer; The Bataks of Palawan, by Edward Y. Miller and others.—Vol. iii: Augustinian Relations of the Races of Northern Luzon—Vol. iv, Part i: Studies in Moro History, Law and Religion. By Najeeb M. Saleeby.—The Government Press, Manila, 1903-05.

Before we accept anyone as an authority upon the Philippines and the Filipinos, past or present, we have a right to demand either that he shall have gone very thoroughly into the bibliography of the subject—which has been accumulating for nearly four hundred years—or that he shall have had very considerable experience among the people themselves. So far as possible, of course, the qualifications of the library-worker should be blended with the observations of the “man on the spot.” Both Mr. Ireland and Mr. Willis had very brief and inadequate experience in the Philippines; neither of them spent more than a few months in the islands. The former, apparently, does not speak or read Spanish, and he had no contact with the Filipinos. Yet he has assumed that he can safely disregard the history of over three centuries of Spanish social, political and religious influence upon the people, and can know their capacities and aspirations from what he has heard or read about other Malay peoples.¹ He has not devoted careful attention to the bibliography of the Philippines even since they came under American rule. This, at least, Mr. Willis has done; but, without intimate knowledge of the Philippine past and without sufficient experience on the ground to qualify him to interpret many conditions of Filipino life today, Mr. Willis often draws unfounded conclusions and passes criticisms which seem to rest upon an initial bias. He is always an antagonist of the American government in the Philippines, and he is thus led to blame political acts or institutions for many evils whose causes lie deeply embedded in social conditions. His personal attitude will deserve special consideration, after the main points in his argument have been considered.

It would be difficult not to concur in the broader statements and conclusions of Mr. Willis's chapter on the Philippine civil service. Both economy and justice to the Filipinos demand a very great reduction of the force of American employees and some reduction, also, of the number of officials. Even more vital is it that the character of the representatives of America in the islands shall be very considerably raised in the average over what it is at present. This is perhaps the sorest spot in the present Philippine situation, and with it all other

¹ Mr. Ireland's book is (as he disarms criticism by saying) only a collection of journalistic contributions. It deals with certain tropical possessions of Great Britain, Holland and France as well as the United States, mostly among the Malay people. He proposes soon to devote to the Philippines one large volume of a series upon the same colonies. For this reason, and since his criticisms on economic and fiscal matters are endorsed and expanded in the work of Mr. Willis, I shall not, in this article, pay special attention to Mr. Ireland's preliminary treatise.

sources of dissatisfaction are intimately involved. The fundamental importance of this point is strikingly shown in the failure, down to the present time, of the constabulary and the very notable success of the American educational program. The difference lies very largely in the average character of the Americans employed in the two forces.

Mr. Willis's statements of fact regarding the Philippine civil service cannot, however, be implicitly accepted. His table (p. 59), as will be explained presently, does not give a correct impression of the relative numbers of Filipino and of American employees. His figures, moreover, are for December, 1903, and were thus a year and a half old when his book appeared. The tendency to an increase in the proportion of Filipino employees has since been furthered by the cuts made last year in the running expenses of the government bureaus. The present program, it is true, is still not radical enough; it only skims the surface and does not strike down deeply into the plan of administrative organization which Mr. Willis criticizes (p. 67). This involves too much "paper work," too much hammering of typewriters, mostly operated by Americans. But there is a logical cause for the pressure from bureau chiefs to get as many American clerks as possible; it is due to the fact that American language, office-methods, accounting and equipment have been introduced into Philippine government. It is not merely a desire to find salaried places for Americans which limits the number and proportion of Filipino employees. If Mr. Willis were better acquainted with the leisurely and inefficient clerical methods employed under Spanish rule in the conduct of government business—and also in private business—he would perhaps realize that there is also a bureau chief's side to the story. A competent, energetic American typewriter and stenographer, for example, does more work in half an hour than the ordinary Filipino copyist of the old régime would do in an office day. Such extreme comparisons will not, in general, hold today; but apart from the learning of a new language, of new methods, etc., the habits and the temperament of Filipino employees have not been revolutionized in five years.

Mr. Willis's table of employees in the classified service, as has already been indicated, does not give at all a fair idea of the positions held under the government by Americans and Filipinos respectively. While it includes all American employees, even the skilled manual laborers, it omits from consideration the following Filipino officers or employees, not classified: some 10,000 elected municipal officials, besides municipal employees, policemen and others, and in particular about 5,000 Filipino teachers and "apprentice-teachers," who are

paid from the town treasuries (while all American teachers are paid by the insular government and are classified employees) ; some 650 justices of the peace, receiving fees ; all the enlisted men of the constabulary, about 5,000 ; and many skilled laborers, as well as all Filipino day-laborers employed by the government.

As one who advocates an independent Filipino government in "five or ten years" (p. 449), Mr. Willis is inconsistent in echoing (pp. 54-56) Mr. Ireland's criticisms on the Philippine civil service examinations. It is, of course, essentially unfair to compare the Philippine examination for a clerkship, which a Filipino is expected to fit himself to fill, with the examination of a Briton who has pursued a special university course and who is looking forward to a life career as an official having a fatherly relation to several thousands of people. The political program of the two nations is very different, and civil service conditions must naturally reflect the difference. Apart from this, it has been necessary to use in the Philippines the sort of men who are on hand for the work to be done ; it would be folly to sigh for a class of specially trained men who do not exist. And what likelihood is there for training such a special class unless a permanent career be held out to them? If Filipino participation in government is to be steadily expanded, we should regard the American employee as a makeshift, necessary for the moment in spite of his excessive cost, but to be replaced by the Filipino as rapidly as possible. It is unwise for either Filipinos or others to demand that Filipino employees equipped only in Spanish shall receive the same salaries which the government is obliged to pay to Americans. It would be unwise to pay Filipinos the high salaries now drawn by Americans even when the Filipinos shall have qualified themselves for the same positions. The wage scale of American employees is an abnormally high wage scale for Filipino society ; why saddle it upon a future government of Filipinos? For American employees in the tropics it is not, as Mr. Willis thinks, too high ; it is rather too low. The remedy lies in more rapidly reducing the number of Americans, thus eliminating a very large percentage of undesirable and narrow-minded men of routine, and in securing higher-grade men for the fewer American positions by higher salaries and better selection. With this immediate end in view, it may be desirable to set a higher standard for certain examinations ; but it is entirely impracticable and undesirable to set up the British colonial civil service as a pattern for the Philippines. We must first change our policy of actively accelerating Filipino self-government.

Regarding local government in the Philippines, as discussed by Mr.

Willis, two general observations may be made: (1) many of his criticisms upon the intervention of the central government in provincial and municipal affairs and of the provincial boards in municipal affairs are based upon the assumption that the American superior officials will, as a regular thing, be despotic and tyrannical; and (2) he draws sweeping conclusions as to local self-government by the Filipinos without sufficient experience among them to give his conclusions value. One who knew, even superficially, what Filipino local government, society and industry were like in the past, could not ascribe the bossism of to-day to the restricting of the right of suffrage by the new municipal code (p. 81). You can not kill bossism in such a society by giving the ballot to ignorant peons and dependants; the economic bosses are thereby the more sure to entrench themselves as political bosses.¹ Mr. Willis apparently thinks that the central government in the Philippines has constantly been grasping for and absorbing power over the local governments. It is significant, on the contrary, that the Commission did, in fact, in the beginning try to let go of power which, bit by bit, it has been compelled to take up again in the interest of efficiency, and generally at the demand of the Filipinos, whose ideal was a centralized, supervisory government like that of Spain.

Many things favor the proposal to abolish the old Philippine provinces as political units, substituting larger and more economic administrative units for certain purposes of supervision by the central government, especially as regards revenue, education, health and public works. Economy urges this move now, and the time is probably coming when it will be yet more logical. Both Mr. Willis and Mr. Ireland, however, entirely overlook the facts that these provinces have a political history of one, two or three centuries; that, especially where they comprise a single island, they are natural geographical divisions; and that, in many cases, their boundaries correspond closely also with tribal and dialectical lines. The tribal and political distinctions will tend to disappear; geographical lines must remain. The question is not one to be settled with a wave of the hand.

It is purely fantastic to assert, as does Mr. Willis, that the "good" class of Filipinos are not "willing to accept office as governors of provinces" (p. 84); there has never been any "holding back" on the part of Filipinos of one sort or another. We are told (p. 73) that "the provincial and municipal government acts were introduced in

¹ Let Mr. Willis inquire into conditions in those Spanish-American countries, with similar social and industrial conditions, where universal suffrage has theoretically been established.

consequence of political necessities at an unfavorable time, and were, to say the least, coldly received by the natives at the outset." The reviewer was on the spot in province after province as these local governments were organized, in 1901, and he knows the facts to be as contrary to these statements as can possibly be imagined. These and other acts of government accompanying them were the chief motives for peace in 1901.¹

When, along with various American political institutions, American legal procedure was introduced into a country which retains as its substantive law in the main the codified civil law of Spain, some confusion was inevitable. Various mistakes were made in the process, none irremediable and none vital. Mr. Willis, in his fifth chapter, grossly exaggerates the confusion. He says, too: "It would be strange, indeed, were Filipinos to prefer the American legal system to that which they have learned through the ages to accept and revere." The Spanish civil code was not introduced into the Philippines until 1888, nor the Spanish penal code till 1885, and to the last days of Spanish rule the islands lacked a code of criminal procedure. During the preceding centuries they were, of course, under Spanish law and Spanish judicial procedure, but they were in a jumble of confusion, sometimes approaching chaos, on matters of legal authority. In a tone of contempt, the author belittles the introduction of the writ of *habeas corpus* into the Philippines; he reminds us that under the old Spanish law, which we think so backward and oppressive, detention beyond twenty-four hours without formulation of cause was illegal. True; but what remedy was there for securing the enforcement of this safeguard? It is a common thing in Spanish countries to place upon the statute book a high-sounding declaration of some "human right," without providing any practical process for making it good. The short-lived Philippine Republic put these Spanish guarantees into its constitution; but they were nevertheless regularly disregarded, as they had been under Spanish rule, when the politico-military authority so desired. It is noteworthy that the writ of *habeas corpus* is not a theoretical definition of a right, but a practical provision of a means for making the right effective. *Habeas corpus* does not always "run" today in the Philippines when there is occasion for it, because the peo-

¹ As for the three provinces which were given civil organization in 1901, and then had to be returned temporarily to military control, they were in each case civilly organized against the Commission's judgment and upon the urgent request of the military commander, as a "measure calculated to pacify them"—excellent evidence as to Filipino desires at the time.

ple are too ignorant or too submissive to assert their rights; but the process for asserting their rights is there.

In this chapter Mr. Willis has also impugned the honesty of the American judges and of the highest American officials in the Philippines. Many of his statements of fact (pp. 98-119) are correct, and point to what the writer of this review believes to be the truth, *vis.*, that several of the circuit judges in the Philippines have not shown themselves to be sufficiently independent of mind, and that there has been in some cases too strong a tendency to convict and a too close concert of action between the judiciary and the prosecuting and police authorities, which are under executive control. Any conditions which even threaten the independence of the judiciary, if only in spirit, are matters of general and serious concern, and all suspicion of undue governmental influence should speedily be removed. Mr. Willis, however, makes graver charges: *e. g.*, that judges are assigned to special cases in order to secure convictions, "a reliable judge meaning one unfriendly to the natives or who can be trusted to bring in a verdict of guilty"; and that "the word of a native in a case where the interests of an American or other white man are at stake is usually considered of no value whatever" (pp. 103, 104). To substantiate such statements facts should be adduced; but these apparently rest on hearsay. They are simply intemperate exaggerations, for which there is no warrant at all in the few cases cited by the author. The hearsay with regard to Judge Odlin who, because he rebuked the attorney-general for presuming to tell him, in a case tried in Manila, what "the Government wished," is alleged to have been compelled to retire from the bench or to accept an assignment to a provincial court (p. 100, note), has been sufficiently answered by Judge Odlin himself, in a letter to Senator Gallinger. Judge Odlin says:

There was never an intimation to me by Governor Taft or by any member of the Commission as to any dissatisfaction with my action in the Freedom case. It was never discussed. On the contrary, I have always suspected that they were pleased rather than displeased. [Six months afterward I decided to accept an exchange with another judge and serve in the provinces; I have never regretted it. My resignation to take up private practice was entirely voluntary.] The statement at page 102 of Professor Willis's book that judges of an independent courage of mind have "always been socially ostracized" is simply ridiculous. If it were not so serious, it would cause laughter only. . . . My own experience justifies me in saying that my clients get just as good a quality of justice here in the Philippines as they would in New Hampshire or in Florida (two states well known to me), and with much more promptness than in either.¹

¹ *Manila Times*, February 7, 1906.

The general remarks made above with reference to Mr. Willis's chapter on the courts will apply to those on public opinion and political parties. The reviewer is inclined to agree with the "American bishop," quoted anonymously (p. 166) as saying that the "impatience of criticism shown by the Commission" has been a harmful feature of the Philippine situation. He would also agree with the author that any official influence exerted secretly to prevent the proposed Sandiko mass-meeting in favor of independence, or any such exertion of influence in general, was and is unwise and does more harm than good; just as the official prosecution of *El Renacimiento* last summer for libeling constabulary officers was politically a serious mistake. But Mr. Willis is quite too naïve with regard to the plans and purposes of some of the gentlemen for whom he appears to demand complete freedom of action; nor does he offer any explanation (pp. 166, 167) of the peculiar character and effect of the seditious dramas which have been suppressed. Closer acquaintance with the character of some of the men involved would shed a different light for him upon some of these cases of "oppression"; at any rate, every government is bound to protect itself; and where a "public opinion" based on widespread intelligence and general reading does not exist, demagogues and adventurers who are "against the government" must needs be supervised and checked. This is, of course, a delicate power and one liable to abuse; but the success of our whole Philippine experiment is dependent upon delicate adjustment. The Filipinos are only just learning how to use the right of free speech. They are in the first stages of experiment with a press of their own, and today barely five per cent of the civilized population are readers of their own press. Mr. Willis's readers who derive their information regarding the Philippines from him alone would not suppose that the Filipino newspapers are steadily gaining in independence of spirit and of opinion; that they print every day many criticisms and attacks upon governmental policy and action, sometimes true but also sometimes grossly inaccurate, making assertions far beside the mark, or indulging in personal insinuations not free from malice. The implication (p. 153) that there has been any press or cable censor since civil government was established is entirely unwarranted. In the face of the voluminous records, it is hard to find justification for the remark (pp. 156, 157) that information from the Philippines "never comes either from the Philippine Commission or from the executive at Washington, and Congress has found itself unable to elicit much additional information." Mr. Willis prefers to charge the Philippine administration with throttling the news, and does not consider how far the

evils of a poor American press service are to be charged to the editorial theory that the public is tired of the Philippines.

In his treatment of the question of public order (chapter v), Mr. Willis has unconsciously suggested a dilemma which it would repay him to consider. Either he is wrong in his underlying assumption that ladronism today is really, in nature and spirit, the continuance of the insurrection and of a genuine popular revolution, despite the fact that this banditry is publicly repudiated by every responsible Filipino leader and by the Filipino press; or else he must admit that the government is bound to take stern measures not only against the obscure ladrones but against those who aid and abet them, above or below in society. That the bandit chiefs are often invested with some popularity, as enemies of more or less irksome authority, is true today, as it was true when José Rizal wrote his Philippine novels. Indeed, the wars since sustained against Spain and the United States, and the social unsettling thus produced, make this still more the case today. But some acquaintance with the character of the bandit chiefs would remove from Mr. Willis the idea he seems to have that they are "patriots." And if the outlawry and violence of these men, and the atrocious deeds they commit upon their fellow-Filipinos, really receive the approval of the great majority of those people, then the prospect for the success of such a Filipino government as Mr. Willis would speedily set up is remote indeed. Really, this is too harsh an accusation against the Filipino people. Aguinaldo's government had, in its brief career, its own troubles with banditry pure and simple, and with free-lance bush-whackers who disliked its control, and it dealt with them after a most summary fashion. It is not true that some bands or outlaws have been "better drilled and better uniformed than the constabulary" (p. 127); and no allowance has been made for the potent influence of terror in making rural Filipinos loath to give evidence against bandits who prey upon themselves and their property (p. 128). Anyone, Filipino or other, who has been familiar with conditions in Cavite province in the past few years knows that it is highly fanciful to speak of the now dead outlaw Felizardo as a "pacifying agent" (p. 144), because he sometimes protected those who paid him tribute. In large part, of course, it must be a matter of personal opinion as to how far "ladronism" today is really political rather than criminal in origin. But such concrete facts as Mr. Willis cites do not warrant his sweeping conclusions.¹

¹The figures on page 127, which are drawn partly from Mr. Ireland, and which show almost half as many Filipino losses and captures from constabulary operations in 1903 as from guerrilla warfare in 1899-1900, are complete figures for 1903, but

The Philippine law as to ladronism is naturally very severe ; death or imprisonment for twenty or more years is the punishment. Such bands, it should be remarked, invariably commit murders, sometimes by the wholesale, and they often administer brutal tortures. Proof merely of membership in such a band has been made sufficient to convict. Ten to twenty years' imprisonment is also prescribed for those who aid or abet the outlaws by giving them information or supplies of any sort or by receiving their stolen goods. Mr. Willis apparently believes these penalties too harsh ; it is rather puerile, however, to criticize the section as to aiding or abetting outlawry by saying that " relations between alleged brigands and members of their families thus became a criminal offence " (p. 129). There have been instances of revenge and spite-work on the part of the secret police, who were a bad inheritance of spies taken over by the American police authorities from the Spanish régime of secret denunciations, but the following is a most extreme statement : " Philippine society is literally honeycombed by the secret service, and no one can feel safe for an instant, whether guilty or innocent " (p. 146). If it is proper to consider all highway crimes committed in the Philippines as due merely to the effort to shake off a foreign yoke, Spanish or American, then the proportion of " political " prisoners in Bilibid should be very much higher than the author, by some occult method of guess-work with the figures, sets it (pp. 135-138). He has also exaggerated (pp. 131-133) the hardships wrought by " reconcentration." The 100,000 *reconcentrados* of Batangas do not belong in his table of those " affected by this policy under civil government," since Batangas was then under full military government, with Malvar in the field. He has accepted a random observer's figure of 300,000 *reconcentrados* in Albay in 1903 ; there are only 240,000 people in Albay province, and many of them were not directly affected. His total of *reconcentrados* should be about 150,000 instead of 451,000. The hemp loss of Albay was much less than indicated ; Mr. Willis's own footnote reference shows that shipments were afterward speedily resumed ; and the drought of that year played its part in producing what loss there was.¹

not for the period of active warfare, when killed and wounded were not all reported. Moreover, such reports were in 1903 complete for every town and *barrio* in the archipelago, while in November, 1899, the American army occupied only central Luzon north of Manila, had spread over the archipelago only by April, 1900, and never reached all the towns.

¹ We get further insight into Mr. Willis's peculiar methods in connection with his use (pp. 142-144) of a document purporting to grant immunity upon surrender to the

With the general conclusions of the author regarding the constabulary (p. 149)—with the statements, at least, that it has frequently proved inefficient, that it contains a large proportion of unfit officials and men and that it has too often committed abuses—one may agree; and yet such an arraignment is but one-sided after all. Whatever be the means and methods adopted to preserve public order in the Philippines, some degree of evil and abuse will inevitably be associated with them. The underlying reasons lie in the past (and especially in the recent history) of the Filipinos and in their present social conditions. The mass of the people do not know their rights, and even those who know them rarely have the valor to assert them. An ignorant people, prone to lick the hand of their political or industrial masters and correspondingly prone to abuse authority over their fellows when they obtain it, presents, first and above all else, a problem of education.

Mr. Willis is not so positive as is Mr. Ireland that the first duty of the Philippine schools is to give industrial training rather than elementary training of the mind. But he is very sure that every move made in the American educational program has given evidence of gross bungling and incompetence. His discussion reads like a contribution from one of the dissatisfied American teachers, who shirked an opportunity as great as is offered anywhere in the world to do genuine missionary work and who came home to scold about the mistakes of those in authority. We read that the "more competent" teachers generally improve the first opportunity to come home (p. 233); that "in a large number of cases" teachers have turned out to be inefficient or objectionable (p. 233); that the "school system as a whole is wretchedly equipped, miserably housed and badly officered" (p. 236); that "no good results can be hoped for" from a set of foreign instructors, who change so frequently "as to preclude the possibility of establishing

leader of the Albay disorder, Simeon Ola, part of which agreement purported to be a promise on the part of Colonel H. H. Bandholtz, a constabulary chief, to see that a certain Filipino should be elected provincial governor. The alleged agreement is countenanced by this Filipino, who afterward became governor by election. The very contents of the document, and the counter-signature of the Filipino promoter of the arrangement as "secretary of war," should have raised doubts of its authenticity with Mr. Willis, if the mere facts that Governor Taft recognized no claim to immunity and that Ola was prosecuted and convicted of banditry did not suffice for him. Colonel Bandholtz says: "No such terms were ever given Simeon Ola or any of the Albay bandits, and I have ample and conclusive proofs of this. The document which he [Willis] reproduced was one that I not only did not authorize, but I had never seen it or even heard of it until it was published in his book." The query arises, why did not Mr. Willis make inquiry of Colonel Bandholtz before launching such a charge of governmental control of elections?

relations of mutual confidence and respect with the population" (p. 242), only "a few" having gained some hold upon the people (p. 229). Finally we are told that "those who have brought abuses or native complaints to the notice of the authorities have often been transferred to other provinces more remote from Manila" (p. 245). The tyrannical government again! And what a tale of errors and incompetency!

It may readily be guessed that Mr. Willis got his information as to the Filipinos' attitude toward our schools from certain Manila radicals. Some of these are not really Filipinos at all at heart, nor to any extent in blood, but are Spaniards; others, if Filipinos, have through education in Spain a preference for the Latin languages, literatures, educational methods and political institutions. Some few there are who, without conscious Spanish preferences or suspicion of things Anglo-Saxon in general, honestly fear that the English language and American educational methods may interfere with the growth of Filipino "nationalism." These last fail to see that anything which spreads education and fosters intercommunication must really help the growth of a national spirit and consciousness, which has been most hampered in the past by the lack of a common medium of communication and by poor methods of transportation. As for the other "Filipinos" previously mentioned, it may be said that they do not represent their people in holding up Latin ideals and methods as Filipino aspirations; only superficially was this true in the past, and the time has gone by when it could ever be fully realized. The men of this category are genuinely and positively anti-American, and will always be so at heart, for they prefer Latin to Anglo-Saxon molds of civilization; but in this respect they represent the Filipino people only superficially and in certain particulars.

Drawing information from such sources, Mr. Willis has not one word to say of Filipino enthusiasm over the American school work—an enthusiasm which may fairly be called quite general. Indeed, he believes that very little interest is felt in the public schools and that such interest is largely maintained by the desire to learn English in order to pass the civil service examinations. Such apathy and disregard of educational opportunities as he believes to exist would, if they really existed, be the most sure sign of the unfitness, not only present but future, of the Filipino people for such a self-government as he would give them in five years or so. To be sure, he quotes the census figures showing a large number of private schools in the Philippines (p. 231, note); but he ought also to have given the enrolment of these private schools, and

he should have told something of the educational facilities they offer and of the equipment of their teachers. He could have learned that early in 1905 the number of public schools in the islands (as the result of Doctor Barrows's campaign, pushing them out into the *barrios* of the towns) had risen to over 4000, instead of the 1633 shown in the census. Similarly, he has taken census figures a year and a half old, showing the total enrolment of the public schools to be 220,000, when it had risen by 1905 to over 500,000.

It will not seem strange that some experimentation as to educational methods and details should have been necessary in the Philippines; it will continue to be necessary, just as errors will continue to be made. Mr. Willis makes scant allowance for the newness of the whole experiment; he himself, after two or three months in the islands, gives us the program for "a rational system of education" therein. He does not correctly state the reasons for making English the language of instruction, nor the original plans for the work of the American teachers. He greatly underestimates the amount of English spoken today; more Filipinos can speak English than Spanish. He should have made closer inquiries as to the stage of development of the Philippine dialects and as to the literature in these dialects.

This author's dominant desire to criticize is nowhere better shown than in his chapter on "The Church Problem." Partly upon the information of some "attorneys" and other anonymous persons, he declares that the purchase of the friars' lands has been a failure, since the best part of these estates has been retained by the orders (a statement absolutely incorrect); that the price paid was too high, and that the native occupants must now pay an unfair rate for land which they considered already their own (it may be suggested that he try to buy some of the "best land in the archipelago" for twice the \$18 per acre which he considers a "very high valuation"); and that the removal of the friars is not assured by the purchase, since they are regularly coming back in numbers (another statement which will not bear comparison with the facts). The author's phrase on page 198, with reference to some of the friars' titles resting upon "long possession," which is worded as if it were a new disclosure, and his amazing remark that the government has "practically consented to the retention" of their property by the religious orders, can be understood only upon the assumption that he thinks a prescriptive title of little importance, and that he does not understand that Anglo-Saxon jurisprudence and statesmanship both forbid confiscation, in a degree that has never been true in Latin countries. Mr. Willis appears on the title-page as "professor

of economics and politics at Washington and Lee University"; therefore it is rather startling to find how he ignores all the obstacles that a long line of legal precedents would interpose to such an offhand settlement as he would apparently favor of all the questions relating to the property of the religious orders and the Roman Church in the Philippines. For him, there is no legal difficulty at all about deciding in whom title to the Philippine parish churches should be vested. Along with the subtlety of its insinuation against the governing authorities of the Philippines, note the *naïveté* of the following passage:

How will the Commission decide this question through the courts? The principles of law which govern it must be of an extremely elastic character, capable of being interpreted in almost any manner that may be suggested by authority. In fact, the problem is essentially ethical and political rather than legal in character [p. 216].

The courts (including the United States Supreme Court, to which appeal of such a question lies) will, it may be presumed, hardly dismiss the legal questions involved quite so easily.

In fairness, Mr. Willis should have made plain that it was after Mr. Taft ceased to be the governor that there occurred the instances he cites of minor governmental favors shown to Roman Catholic officials (American bishops), as compared with a coldness toward Aglipay and the schismatics. Anyone who has followed at all closely the thousand and one intricacies and pitfalls of this socio-political problem left us as a legacy of Spanish rule, will unquestionably pronounce Mr. Taft's successful steering through these entanglements as almost his strongest claim, personally, to the gratitude of the Filipinos, and as perhaps the greatest net achievement, thus far, of the American government in the Philippines. Mr. Willis might with great profit study more closely the history of the Aguinaldo government as bearing upon the religious question; particularly the split in the Malolos Congress, the 1898-1899 plans of Father Aglipay, the confiscation of friar property (also the disposition made of the proceeds) and all the other evidences that bitter civil strife would have divided the Filipinos upon the religious question, had no impartial hand intervened. He has never even considered the extent to which the situation is complicated by the failure of the Filipinos, even of most of the educated Filipinos, to comprehend what separation of church and state really means in actual practice. If they did comprehend it, the religious problems in the Philippines, so far as they are political in character, would speedily settle themselves.

Mr. Ireland's chief criticism of the American government in the

Philippines is that it has not, in imitation of British colonial patterns, set out primarily to further the economic development of the islands. He regards it as wasteful and quixotic to spend proportionately large sums on education and upon an administrative organization which looks toward the social and political development of the people themselves. Without adopting this point of view, Mr. Willis has nevertheless followed Messrs. Ireland and Colquhoun in claiming that the Philippine government has done little for public works and improvements. But not one of the charges of inertness in this respect that are repeated from Mr. Colquhoun (p. 369) was true when the latter made them. Ignorance of the former condition of the Philippines as to roads, bridges, etc., is in part responsible for the loose statements made by all these writers. In part, too, information has been drawn from Filipino politicians and foreign (especially British) business men at Manila. These last are the most reckless critics of the present administration, partly because of their resentment over the fact that some of their modes of commercial extortion have been checked, and also because the more normal conditions now established preclude their making the high profits of the times of military rule in 1899 and 1900. Only thus can we explain Mr. Willis's assertion that "it is generally conceded" that the roads "are today very much worse than in Spanish times, and that our expenditures in repairing them cannot compare with the outlay of our predecessors [the Spaniards]." The islands were never well provided with roads in the past, and the same is true today; and the existing roads are still in more general disrepair than before warfare began. But American exertions and expenditures in this respect have, barring certain provinces specially favored in the past, been very greatly in excess of what they were under Spanish rule. Mr. Willis should have mentioned that, in giving a degree of "home rule" to the provinces in 1901, it was expected that they would take care of their own roads, while the central government should devote itself to trunk roads or highways of exceptional importance. This expectation has not been realized—here again we have one of the matters in which greater centralization has been forced upon the insular government—and the road work will henceforth be supervised and in large part done by the central government. During the fiscal years 1904 and 1905 there were constructed under insular appropriations (quite largely out of the Congressional relief fund of \$3,000,000) 354 miles of road at a cost of 1,574,300 *pesos*; up to August, 1905, out of provincial revenues, 2615 miles of road had been repaired at a cost of 687,821 *pesos*, and 2100 bridges and culverts have been newly built or repaired at a cost of over

450,000 pesos. This is rather a different story from that told by Mr. Willis's figures and assertions.¹

It is generally conceded that the Philippines are not today in a prosperous state. But how true is this author's picture of starvation and suffering? It is time that the quotation from "General Bell" (p. 23), to the effect that one-sixth of the population of Luzon died as the result of the warfare of 1899-1901, received its quietus. This was an anti-imperialist bulletin, based on an unverified newspaper interview, not with the well-known General James F. Bell, but with General James M. Bell, a different man entirely, whose personal experience was practically confined to the three southernmost provinces of Luzon, where there was comparatively little fighting. If the interview was authentic, the soldier in question had not the data on which to base such a statement. And the cold figures of the census of 1903, the first real census the Philippines have had, prove that it could not have been true. Mr. Willis would not have so overdrawn the picture as to rural distress and lack of males of working age (pp. 343-345), had he consulted the final figures of the census (which, as we have seen, he found time to consult in giving school enrolment figures that were already antiquated and useless). One would suggest that his "disproportionate number of women and children" is in part due to his observing, as he drove along some rural roads, women and children about the houses while the men were in the fields and forests. At any rate, the census of 1903 showed only about 90,000 more females than males of 18 or more years of age among all the civilized Filipinos.² Since Mr. Willis has spoken as if he were describing conditions general throughout the Philippines, it is fair to compare with his statements these figures for the whole archipelago. It is plain, however, that he has drawn his information from men of certain provinces, especially Batangas, and has had in mind particularly a few of the provinces where the warfare was most prolonged and was waged with "marked severity." The census of 1903 showed ten per cent more women than men in Batangas province. How unsafe it is to draw rapid conclusions from these figures is indi-

¹ Meanwhile, more than \$2,000,000 have gone into the Benguet road (partly from the relief fund), very much strengthening what Mr. Willis has to say of the comparative extravagance of this road to a "summer capital." The future will have to show whether this road can justify itself.

² Census, vol. ii, pp. 14, 15. From the totals of males and females respectively, deduct the figures for males and females under 5 years and from 5 to 17 years; then allow for the adult males in the Philippines of American or European birth, also Chinese or other Asiatics than Filipinos.

cated by the fact that in Capiz province, which saw comparatively little fighting, there were twenty per cent more women than men, while in Iloilo province, another part of Panay Island, which saw much more fighting than Capiz, there were only four per cent more women than men. The explanation of these last figures is perhaps chiefly to be found in the absence from Capiz of laborers engaged in planting and harvesting sugar in Negros. Laguna, a center of trouble no less than Batangas, showed but two and one-half per cent more women than men. But Union, which escaped the war except for some bushwhacking, had five per cent more women than men, while Tarlak, which saw much more fighting than Union, actually had in 1903 more men than women. Leyte and Sámar both saw plenty of fighting—Sámar is one of Mr. Willis's theaters of "marked severity"—and both had in 1903 nearly four per cent more men than women. It is fair to ask the author why he focused his attention so exclusively upon Batangas, and why he failed to note the remark of the census editors (vol. ii, p. 64) that "all the Tagalog provinces except Batangas and Marinduque [a little island] were above the average" of the archipelago in the proportion of males of voting age to the total population. It is fair to insist that he should confine himself to actual figures even for Batangas, not accepting the reckless assertions or manufactured statistics of the Sixto Lopez class of Batangans—who by the way, were far remote from the fighting.¹ The census (vol. ii, pp. 312, 313) showed that males of militia age form nineteen per cent of the total civilized population; in Batangas, they made up seventeen per cent; in Union, with little fighting, only sixteen per cent; in Cagayan, with even less fighting, eighteen per cent.

Surprise need not have been expressed (p. 266) that "the more rigid sanitary control exerted by the Americans has been followed by an era of disease and death probably never before paralleled in the history of the islands," for this surprising statement is not true. Mr. Willis need go back for a good comparison only to 1882, when the deaths in Manila and its environs from the cholera epidemic reached 30,000 to 40,000 (the figures were never given exactly even for the capital, and scarcely at all for the provinces), as compared with 4000 deaths in almost the same district during the epidemic of 1902-03. It is above all worth noting that cholera started again in August, 1905;

¹ Figures as to the loss of population and general decline of industry of Balayan, the home of the Lopez family in Batangas, lately circulated in an anti-imperialist document, are quite in point; most of the figures of these "statistical tables" have been made out of whole cloth.

that it has been confined to Manila and a few neighboring towns ; and that the mortality has been restricted to a few hundreds. Only sheer prejudice can explain the statement that the efforts against smallpox have not been " attended by satisfactory results " ; the board of health has made its best record here. Our author is also entirely wrong in his charge (p. 269) that " all medical aid to the Filipinos, all dispensary and similar work, has thus far come from private religious or secular charities." This has not been the case under American government either military or civil, as the slightest inquiry would have shown. Further knowledge of social and moral conditions under Spanish rule would have made the author more careful, again, in his statements regarding sexual morality and disease in the past and now. It is rather petty, moreover, to blame the new régime for not having already made good provision for the defective classes, especially the insane (almost invariably harmless) and the lepers, and at the same time to belittle the efforts already made on behalf of the latter. The author would do well to consider somewhat the Filipinos' preference for maintaining the family life of their defectives and even their diseased—a preference amounting to a violent prejudice against all government quarantine and segregation methods, detention-camps or hospitals, and constituting the most potent cause of the high mortality from cholera. It is certainly strange not to take into account the woful ignorance and superstition as to sanitary methods which make either epidemic or endemic diseases so fearful in the Philippines.

Similarly, Mr. Willis nowhere makes any allowance for the improvidence and unenergetic character of the Filipinos and their lack of initiative, as bearing upon their unsatisfactory " rural and agricultural conditions." This is especially true with respect to his discussion of the land tax (pp. 352-355). It is not wholly true that this tax is a new idea in the Philippines ; it was long urged by the best Philippine economists under Spanish rule, and was in part tentatively introduced. Its opportuneness in 1901 may very fairly be in question ; but the essential fairness and wisdom of a tax which shall more directly than in the past reach the holders of property can not be questioned. The need for fuller data as to land tenure, methods of production and bases of valuation has been shown by the faulty workings of this tax until its temporary suspension this year. Some such tax, imposed after more thorough study of conditions, province by province, and administered more scientifically, must inevitably form a very important part of the future Philippine fiscal system. There will arise, in the fuller reconsideration of the tax, the question of a choice between the Anglo-Saxon

ad valorem levy and the Spanish principle of a tax on rental value in one form or another (a principle also commonly applied throughout the Orient). In so far as a tax upon assessed valuation will make Filipinos develop unused or imperfectly used pieces of land, it is to be preferred, as exerting the sort of stimulus to greater initiative which is sadly needed among them. Many of them are spending time in political agitation about high taxes or in petitioning for their suspension, time and energy which might be used in making their land pay not only the taxes but rich profits. Nevertheless, it is conceded that the land tax was imposed at a time illsuited to such an experiment.

A "relative reduction of agricultural prices" (p. 355) has been assumed—largely, it would seem, upon the testimony of pessimistic agriculturists. The Philippine producers are worst off as to sugar; but even here they are not in the wretched dilemma represented to the author (p. 357). Because conditions are not altogether roseate, it is not necessary to accept all the calamity stories of the Filipino producers; and it is genuine friendship to them—it is of the large cultivators and proprietors that I am now speaking—to tell them that the chief trouble lies in their disinclination to get down to work, to study to improve their methods of cultivation and preparation of crops, so as to occupy a better place in the world's markets. As we shall note later, they had begun falling behind in this respect before American rule began, and "hard times" had an earlier origin, though aggravated by the unsettling and destruction incident to war, and above all by the loss of draft-animals by disease.

About the only instance in which Mr. Willis has made allowance for the time element, and has suspended judgment in recognition of the brief period since the new government was organized, is with regard to the land laws, providing for homesteading, perfecting of squatter-rights, sale of public land, etc. (p. 375). The reviewer has always felt that a way could be found to promote the desired development of areas today going to waste in Mindanao, Mindoro and other regions that are practically unpopulated, and at the same time to safeguard the future interests of the Filipinos against "exploitation," by conferring upon the Philippine government authority to lease for long periods large tracts of such unoccupied territory, retaining in the government the title and the right to control the administration of such areas and to revise the leases in the interests of the people. The question of future internal development through the homestead and occupants' privileges depends very considerably upon the amount of initiative which the Filipinos themselves shall show; it rests primarily with themselves to improve their opportunities.

Mr. Willis assumes that we are on the eve of a merciless exploitation of the Filipinos. The talk of the "exploiters" which seems so to have impressed him is that of disappointed men, who bitterly declare that, by restrictive legislation, the prospect for legitimate and desirable development of Philippine resources has been blighted. He is loath to give credit either to Congress or the Philippine authorities for the hindrances that have actually been interposed to the "exploitation" | that looms before him as so great a bogie. He does say (p. 403) a good word for Mr. Taft's opposition to the admission of the Chinese—the one case noted by the reviewer wherein the former governor of the Philippines has gained the writer's approbation. He is quite of a mind with a certain group of anti-imperialists who have encouraged the Filipino radicals to oppose the governmental plan for securing railroads in the islands, upon the ground that this is merely a sinister scheme for the enslaving of the Filipinos, the entering wedge for "exploitation" by American capital. Like parrots, these Filipinos are repeating in their press the Boston-made arguments against perpetual franchises and governmental guarantee of interest upon the bonds; it is only a pretext, they are told, whereby Mr. Taft means to make independence impossible. And with the next breath these Filipino politicians and American critics will denounce the government because it does not improve the methods of transportation and further the prosperity of the people by aiding internal development!

As to the land bank and the undoubted need for better facilities for agricultural credit, Mr. Willis is wrong in assuming that the way has not been open for private enterprise in this direction; such enterprise would have been welcomed, but private capital has not come forward. "Unquestionably" the Philippine Commission has *not* "full authority" to deal with this matter, as he asserts (p. 350). Congress has shown jealousy of its power with regard to Philippine fiscal legislation; and any scheme for government support or guarantee for a land bank in the Philippines will probably be denounced in Congress as "populistic" and dangerous.¹ Usurious rates of interest are no new thing in the Philippines; they have been higher in the past, and the present rates are overstated in this book.

Minor errors in comparing the Spanish and American régimes and in regard to navigation matters might be pointed out, but the survey of

¹ It would be interesting, by the way, to have Mr. Willis's opinion of Aguinaldo in the rôle of a statesman, expressed after an analysis of Aguinaldo's remarkable scheme for a land bank—mentioned on p. 310—and especially of the scheme for a net of "coöperative railways" which accompanied the land-bank proposal.

tariff and shipping legislation (pp. 271-300) is in the main accurate, and shows properly the neglect and ignorance of Philippine needs on the part of Congress. So, too, chapter xiii, on "The Business Situation" is, in its main essentials, sound and accurate, and the reviewer believes that the following general conclusions can not be gainsaid : (1) Philippine trade is no great item over which to labor and dispute, in any event; hence in reaching for it we can not afford to prejudice our general position in the Orient, especially as to the "open door," by preferential tariffs or shipping restrictions. (2) The development of this trade and of the resources of the Philippines must be slow and gradual. (3) The idea of converting Manila into the "trade-depot" of the Orient is picturesque nonsense; the economic wastefulness of transshipment would always be against it; and it is the filmiest promoter's dream, so long as we cling to a system of preferential tariffs, in the face of free ports virtually on the Asiatic mainland like Hongkong and Singapore. One might point out in this chapter also minor errors of fact, and one recognizes here again the criticisms of business men in Manila who do not like American rule. A few general remarks may be made as to the analysis of trade figures on pages 313-323 : (1) In part, heavy rice importations during recent years indicate a tendency to neglect the less profitable food product for the high prices to be obtained for the great export crop *abaká* (Manila hemp), and these figures are to some extent therefore a sign of prosperity, though such prosperity is localized. (2) Though it is true that the principal source of the increased imports into the Philippines is money from the United States treasury spent by the soldiers individually or by the government directly, yet it is also true that the purchasing power of the Filipinos generally has increased, not only from this source, but also from the very great growth in value of exports—a hard statistical fact that can not be evaded. (3) The increased imports are partly due to there being in the hands of the Filipinos more money than ever before in all their history, and to the fact that their clothing and diet have, in large districts of the archipelago, very noticeably improved—that the standard of living has in fact been raised.¹

The culmination of Mr. Willis's arraignment comes in his chapter on "Income and Outgo." He makes it appear that this government of oppression and incompetence is costing the Filipinos more than five

¹This, of course, flatly contradicts the statements made by Mr. Willis. He who wishes to enter into a further analysis of these trade figures will find some data for it in one of a series of articles contributed by the reviewer to *Dun's International Review*, New York, December, 1905, pp. 23-25.

times as much as did the Spanish rule against which they revolted! Mr. Ireland exaggerated the cost of Philippine government by including some mere bookkeeping totals, wherein certain expenditures were duplicated; then, asserting incorrectly that Philippine internal trade is negligible, he figured the cost of government to the Filipinos as being forty-six per cent of their exports—in other words, almost one-half their total capacity for production. This much-quoted criticism was sufficiently inaccurate, but Mr. Willis goes far beyond it. These writers' criticisms on the way in which the figures for Philippine receipts and expenditures have been presented in the annual reports of the Commission are entirely justified.¹ Nevertheless, if sweeping statements as to the cost of government and comparisons with the Spanish régime are to be made, we have a right to expect that colonial experts and professors of economics will take the trouble to get the exact figures. Mr. Willis's table on page 408 includes in its totals of receipts and expenditures many items which are gross instead of net; yet it forms the basis for deductions and comparisons (pp. 410-427); and he foots up a grand total thus obtained as showing the "actual cost to the natives of the Philippines of four years of Commission government." For the purposes of comparison for which he has used them, some of his items of receipts and expenditures are practically doubled. He has also failed to obtain the complete figures for permanent improvements (p. 411), and thus makes out the annual cost of "maintaining peace and order and of legislation" to be \$10,300,000 (it should be \$11,300,000, according to his figures), to which he adds \$3,200,000 as the annual cost of municipal and provincial governments. Why, if Mr. Willis was unable to untangle the published figures, did he not get, while in the Philippines, the statements showing the actual expenditures and the purposes for which the expenditures were made for the fiscal years 1902, 1903 and 1904 (during which years only had the present government been in full operation), and thus calculate the average annual cost of government?

It is proper to take into account, as bearing upon the cost of this new enterprise to the American people, the \$30,000,000 or thereabouts annually spent from the United States Treasury in the Philippines (pp.

¹ In justice to the auditor, it should be said that his ideal has been a bookkeeper's and not a statistician's; that he found a very confused system of accounts and had first to restore order; and that the government has been since 1901 in the formative stage and has involved many features calculated to upset statistical tables, such as the existence till recently of a fluctuating currency, the establishment of a new currency in its place, a changing system of appropriations, etc.

412, 413, 427-433). It is also proper to take into consideration that the Philippines themselves formerly paid for the Spanish and native soldiery in the islands (until the revolt of 1896), for Spain's diplomatic and consular service in the Orient, for part of the cost of Spain's colonial ministry, for colonial pensions, etc. But in so far as we are invited to consider the actual burden of insular government supported by the Filipinos now and formerly, these figures do not enter into the comparison. For the tax burden under Spain, Mr. Willis resorts (pp. 414-419, 426) to the report of the first Philippine Commission, showing Philippine revenues of 13,579,900 *pesos* in 1894-95.¹ These figures were not carefully analyzed in that report, and Mr. Willis has not sought information elsewhere. This Spanish budget did not, as he supposes, cover all the cost of provincial and municipal administration; and in it the burden resting on the people under Spanish rule was far from fully shown. The amount assigned to "churches and courts" covered salaries to parish priests and certain supplies to the churches, but not the many sorts of church dues, often the heaviest burdens upon the common people and practically a governmental exaction, enforced by the authority of the most powerful branch of Spanish government in the islands. Then there was the forced labor (not now exacted) for work on highways, etc., forty days in the year before 1883, thereafter fifteen days. Moreover, many acts of government and not a few subordinate officials were paid wholly or in part by fees, apart from the sales of stamped paper included in the budget; perhaps \$1,000,000 was thus levied on the people to support petty officers who, if they exist today are paid salaries, excepting justices of the peace. Last but most important of all, "squeeze" was common, as it is not today. In the matter of customs revenues alone, the actual amounts paid by importers (hence, by the mass of consumers) was considerably in excess of the sums officially reported to the treasury.² This is the chief explanation of the remarkable increase in customs receipts under

¹ It is worthy of note that Philippine revenues for 1896-97 had risen to about 17,500,000 *pesos*, besides the issue of war bonds to the amount of 40,000,000 *pesos*. Mr. Willis reports inability to find a budget of the Aguinaldo government; he will find an incomplete budget and revenue law, as decreed by Aguinaldo, in Report on Organization . . . instituted by E. Aguinaldo and followers . . . by Capt. J. R. M. Taylor, War Department, 1903, pp. 68-77.

² Collusion and fraud naturally played the largest part with relation to imports having the highest value or paying the highest duties. This takes away the significance of Mr. Willis's computation of the average *ad valorem* rate of duties under Spain as first 14.5, then 22.5 per cent, compared with 27.8 per cent from 1900 to 1903.

American rule, while the Spanish tariff was still unchanged and while large parts of the archipelago were closed to trade. The courts were also flagrant offenders, and "justice" was often bought. This is not to say that all Spanish and native officials were then "grafters;" but the practice was so common as almost to be a recognized thing. This is one accusation at least that Mr. Willis has not brought against the American officials today.

Another item of importance: it would be right for Mr. Willis to calculate the Spanish expenditures for 1894-95 at the rate of fifty cents gold to the *peso*, if the comparison related only to that one year. But the silver dollar had just reached that value at the end of a decline which began in the latter seventies. The Spanish budget ran from 11,000,000 to 14,000,000 *pesos* from about 1880 to 1895, and was quite uniform in content as to taxation items after the reforms of 1883 —when, in particular, the tobacco monopoly was abolished. But an average value of the *peso* for the whole period would be about 75 cents gold. This would give us a cost of government of from \$8,000,000 to \$10,500,000 gold, not considering the higher cost of government from 1896 to 1898. Now, to make a fair comparison with American rule, we should have to take all the omissions from the Spanish budget into account, as mentioned above. This would give us an average cost of government under Spain of \$10,000,000 gold at the very lowest (loss from "squeeze" remaining unestimated).¹ Including municipal and provincial governments, the cost under American rule will be, for the year 1905-06, about \$12,500,000 net (with a somewhat higher average for the years 1902-1906). This is a rough approximation to the truth. Moreover it includes, upon the American side of the ledger, expenditures for schools, sanitation, harbor improvements, roads, etc., far surpassing the record of Spanish rule in these lines. It does not include the currency reform, purchase of friar lands, Manila municipal improvements, etc., which have been paid for by bond issues, nor take into account the \$3,000,000 gift of Congress or the things done with it.²

¹ Nor is the money drawn from the people by the friars, either as parish-priests or as landlord-orders, here considered. V. Diaz-Perez (*Los frailes de Filipinas*, Madrid, 1904, pp. 42, 43) estimates the product of the friars' estate at 16,000,000 *pesos* annually, the church dues at 5,000,000 *pesos* annually, and states the amount paid by the government to the church or its priests as nearly 1,500,000 *pesos* in 1895.

² In many respects the best treatise on Spanish fiscal policy in the Philippines is Gregorio Sanciano y Goson's *El Progreso de Filipinas* (Madrid, 1881). It shows the estimate of necessary expenditures for 1881 to be 16,500,000 *pesos* (when the *peso* was worth about 90 cents gold), calls attention to the woeful inadequacy of educational

Nor is this all. The very decline in foreign-exchange value of their silver money, which enabled Mr. Willis to halve the total of the Spanish budget, added in some ways to the Filipinos' burden. The currency evils were the chief topic of discussion as regarded the Philippines for six or more years preceding the outbreak of 1896, but nothing of importance was done. The "hard times," for which Mr. Willis blames American rule entirely, had really begun before the war. Owing to archaic trading conditions, the small producer got but little of the benefit of raising his crop in a silver country and selling in a gold market. Wages remained quite stationary during the decline of the *peso*, while the purchasing power of the day's wage was steadily decreasing. Since American occupation, the laborer has in part been getting his due by the readjustment of wages attendant upon war and change of sovereignty; but the actual cost of labor, measured in gold, has not greatly increased.¹

We come now (p. 426) to the most amazing of the author's tabular comparisons. Against the Spanish collections of 13,579,900 *pesos* for 1894-95, Mr. Willis sets his estimate of 12,100,000 *pesos* to be collected under the new internal revenue law, of 18,900,000 *pesos* for customs collections (a figure more than 2,000,000 *pesos* in excess of net receipts for either of the past two years), and of 4,300,000 *pesos* for proceeds of the land tax (another excessive estimate). The actual collections under the new internal revenue law for the first half of 1905 were at the rate of about 7,000,000 *pesos* annually. And Mr. Willis must have known of the announcement that this law was designed in part to open the way for the reduction of the customs revenues. Yet he is willing to set such an exaggerated hypothetical estimate of revenue collections against the incomplete statement for a comparatively low year of Spain's actual collections, and in the next breath he says: "This furnishes a comparative test of the real burdens resting on the people ten years ago and at the present moment." The burden of taxation at the present moment he thus represents to be over 35,000,000 *pesos*. The revenue collections for the fiscal year 1904-05 were

and public works expenditures, and declares that any properly efficient Philippine government must cost 30,000,000 *pesos*. As a principal means for getting the necessary increase of revenues, a land tax was urged.

¹ But Mr. Willis criticizes the Philippine currency reform too! In part, this is because he thinks, in opposition to the judgment of those who studied the question, that the United States currency should simply have been transplanted to the Philippines (pp. 307-309). He also complains (p. 305) because the silver market was not forestalled and all the needed silver secured before a rise began in the world-market.

really 18,264,000 *pesos*, net, for the insular government (according to figures furnished the reviewer in Manila last August) and about 9,500,000 *pesos* for the provincial and municipal governments, or a total of less than 28,000,000 *pesos*. Comment is unnecessary.

The new internal revenue law is, in the judgment of the reviewer, not wholly defensible either in conception or execution. But this is not on account of its levies upon tobacco and alcoholic products, nor can we accept the frenzied and reckless statements of the tobacco and alcohol manufacturers when it was on its passage (echoed in part by Mr. Willis on pp. 424, 425). The great objections to the law are, first, its intricacy of detail and necessarily large machinery of administration; second, its inquisitorial features, surpassing even the Spanish system in this respect; and third, the return in some respects to the Spanish principle of taxation upon business transactions and upon persons rather than upon property. It is rather curious to note that Mr. Willis leans to Spanish ideas of taxation in his brief outline of a model Philippine government (p. 452).

Mr. Willis's constructive plan is, indeed, very incomplete, for one who would have the Filipinos set up so soon by themselves (p. 449). We might ask him to describe any "native models" for local governments; there are Spanish models in the minds of the aristocracy, but no native models are left, except among the hill tribes and Moros.¹ As for "thrusting upon the Filipinos the ideas and institutions which have been developed by the Western nations" (p. 444), we may ask, what were the social and political ideals set up by the Filipinos at Bakoor and Malolos? That the Aguinaldo government was a successful going thing he thinks "amply attested" by evidence (pp. 441-444) which is really at variance in most important respects with the actual records of that revolutionary government. The standard documents of those who declare this government a success are the articles of the naval officers Wilcox and Sargent, which are mainly remarkable for what these observers in 1898 did not see and learn in the places they visited, as may be proved by reference to insurgent documents and various publications in Spanish upon this period.² Nowhere does Mr. Willis allow for

¹ The picture of "a successful tribal or patriarchal form of rule" in some little islands north of Luzon (p. 442) is mainly phantasy. The Calamianes islands, by the way, are not there, but near Palawan.

² Those who desire to check up the accuracy of Messrs. Wilcox and Sargent as observers are referred to the insurgent records in the War Department (including Taylor's report, above cited); and to the following especially among Spanish publications: Father Graciano Martinez, *Memorias del cautiverio* (Manila, 1900); Carlos Ria-Baja, *El desastre filipino* (Barcelona, 1899).

the great gap between the ideals of the few educated Filipinos and the actual state of the masses. It is the Filipino intellectual oligarchy from whom he has heard and of whom he is thinking. Correspondingly, he will take evidence from any source, even from John Foreman, as to the brutality of American troops in the Philippines, being led thus into gross errors of statement (pp. 10, 14, 15, 16, 251), such as that "quarter was seldom given."

Enough has been brought out to show that here is a critic with a very strong bias preparing a political brief, not the calm, detached survey of events and conditions to be expected from a professor of economics and politics. There are, as indicated, many criticisms in this book which deserve the careful attention of our people at home and of our Philippine administrators as well. But errors, exaggerations and insinuations are so interblended with accurate criticism as to make the book a wholly unsafe guide for him who can not go fully into the already very large bibliography of the American occupation of the Philippines. Mr. Willis insinuates that it would be risky for his informants for him to name them; but we have seen that it is not hard to recognize the sources of most of his information, and the two or three Filipino names he does give certainly do not inspire confidence.

His personal bias can not be better shown than by his insinuations (mostly covert) against Mr. Taft. By representing the president's instructions to the Commission upon April 7, 1900, as giving to that body power to legislate "under such regulations as you [Governor Taft] shall prescribe," he makes out (pp. 31, 32, 41-45) that Mr. Taft was a dictator in the Philippines. He could easily have noted that those instructions were addressed to the secretary of war, and the "you" referred to Mr. Root, who was to supervise the exercise of this portion of the war power of the president. The powers ascribed to the governor-general (p. 45) have not in fact been conferred upon that official. Incorrect also are the assertions (pp. 42, 43, 49) that the Commission has been averse to holding public sessions on proposed laws and to hearing and heeding Filipino opinion; under Governor Taft, in particular, the very reverse was the case. Again Mr. Willis represents (pp. 20, 21) the Commission under Mr. Taft as "pushing forward the notion of commercial exploitation"; how some of their business critics at home and in the Philippines—or Mr. Ireland—must smile at this! He distorts (p. 164) the meaning and spirit of Taft's famous valedictory to the Americans in Manila in December, 1903. He finds "nothing of a striking character in Mr. Taft's testimony" at Washington in 1902, testimony which attracted national attention and won a tribute to the

witness's fairness from practically every Democrat who afterward spoke in the debate. He deliberately suppresses, with stars (p. 254), clauses of Mr. Taft's testimony regarding the examination of prostitutes in Manila, so as to warrant the charge that this testimony was "unfair." He virtually distorts part and ignores part of Mr. Taft's testimony regarding the Federal party, though citing its place in a footnote (p. 174). On pp. 173-178 there is bald misrepresentation of Mr. Taft in his relations with that party, and he is accused of "insincerity" (p. 175), or of worse (p. 188). The writer of this review is personally familiar with the history of the Federal party from the first, and knows that Mr. Taft did not encourage the Filipinos to believe that statehood was probable of attainment, nor fail to warn them that the American people would have their say about that question; much less did the idea originate with him or did he "counsel" its being set up as a party slogan. All good, real, representative Filipinos, according to Mr. Willis, are members of "the Nationalist party, the principal political body of the islands," also comprising "the general mass of the people." He speaks as if he imagined that the Filipino Nationalists were what they never have been and are not today—*one* party. It is to be hoped that such an alignment of Filipino opinion may early be brought about, under competent, patriotic, really representative leaders, who will not fight with each other and divide into factions, as they always have in the past. The Assembly elections next year will afford a good test of this possibility, at the same time that they offer a good opportunity to the demagogues.

Finally, Mr. Willis insinuates (p. 435) that at Washington secret influences "in behalf of financial and industrial interests" have successfully intervened to take dishonest advantages at the expense of the Filipinos. He speaks of "features of administration," and apparently refers to dishonesty in the war department, not to Congressional action or inaction regarding tariffs, shipping, etc. This is a serious insinuation. Why does not Mr. Willis give us the specifications?

Mr. Willis's book has been made the basis of the preceding lengthy discussion, because it is the epitome, as it were, and the most pretentious of a series of attacks upon American administration in the Philippines, which, though purporting to be based upon a careful and competent survey of Philippine economic and political conditions, have in fact no claim either to carefulness or competence. It is a pleasure, therefore, to note the appearance of a Philippine economic study which is justly entitled to commendation on both these grounds. Such is Dr.

Victor S. Clark's monograph on *Labor Conditions in the Philippines*, with which the student of the Philippine question will do well to couple his monograph on *Labor Conditions in Java*.¹ It would not be an exaggeration to call Dr. Clark's monograph the best economic study yet added to Philippine bibliography. There are publications in Spanish which have a greater arsenal of data, but no real economic study of the Philippines, in the modern sense, was put forth under the old régime. Upon the question of the price of labor, as connected especially with the fall in the purchasing value of the Philippine currency, the student will find Dr. Clark's monograph particularly valuable. The author has carefully held himself within the limitations of his study (which has been considerable) of the Philippine past. What is still more important, he has not failed to take into account Philippine social conditions at every stage, and the picture he presents is therefore true to life, and is no mere theorizing with cold figures. The significant social differences which Dr. Clark finds between the Filipinos and the Javanese may be commended to the attention of Mr. Ireland.

No history of the Philippines, properly so termed, has yet appeared in the English language or, for that matter, in Spanish either. The historical survey in Foreman's book, so commonly cited, is the merest hodge-podge of information and misinformation. Professor Edward G. Bourne's introduction to the important series of translations of Philippine documents now appearing in fifty-five volumes² has so far been almost the only attempt in the spirit of the modern historian to survey the main movements of Philippine history. Because of the great lack of competent, original material upon this subject, to which the student or inquirer may be cited, mention should be made of a little Philippine history which appeared last year, written by Doctor Barrows, now head of the Philippine schools, as a textbook for the insular schools.³ Until the needs of American readers in this respect are better supplied, this book, designed primarily for Filipino pupils, may well be recommended as a condensed survey of the subject by a competent scholar.

The student of Philippine politics will find a great deal of significance and value in the ethnological studies which have been issued during the past two years by the Philippine Ethnological Survey, from the govern-

¹ Both published in Bulletin of the Bureau of Labor No. 58 (May, 1905), Government Printing Office, Washington, the monograph on the Philippines covering 185 pages and that on Java 49 pages.

² The Philippine Islands, 1493-1898, Cleveland, The A. H. Clark Co.

³ History of the Philippines. New York, The American Book Company, 1905.

ment press at Manila. Volume i of these publications, *The Bontoc Igorot*, by Dr. Albert Ernest Jenks, for a time chief of the Philippine Ethnological Survey, may be described (despite the amount of material hitherto published on Philippine ethnology, largely by men who had never been in the islands) as the first really scientific and thorough-going ethnological study made in the Philippine Islands. It is in the light of such studies as this that we must reconstruct the primitive condition of the Christianized Filipinos who have been under Spanish influence. That Doctor Jenks came away from his sojourn among the Igorot of Bontoc with a relatively high opinion of their character and capacities, is certainly of interest.

Next in value among these publications must be placed the *Studies in Moro History, Law and Religion*, by Najeeb M. Saleeby, forming part i of volume iv. Mr. Saleeby, an American citizen of Arab descent, is superintendent of schools in the Moro province, and he has obtained from prominent Moro rulers and religious law-givers personal information, manuscript copies of genealogies, codes of law, religious tales, etc., which, though he has here given us but a fragment of his investigations, already make available to us more real knowledge of Moro history, customs and beliefs, than was brought to light perhaps during the entire period of Spanish rule. The perusal of these codes of law invites comment upon the hasty remark of General Leonard Wood, after less than a year in the Moro country, that the Moros "have no written laws worthy the name," and that their laws and customs need hardly be taken into account in preparing a special codification for them. It has always been asserted by the American army men in the Moro country that civil government was unsuitable in this region; and one of the disadvantages of full civil government on which they laid much stress was the prospective frequent change of governors. This disadvantage, however, has attended the quasi-military system still in vogue. Among the officers on the island of Joló, where the recent serious trouble occurred, there is none who can talk directly to the Moros, nor have the officers the assistance of a single American interpreter. The result of such conditions has been shown in the constant change of ideas and policy—if we can be said to have developed any real policy as yet—on the part of the chief officers in command in the Moro regions. These first published studies of Doctor Saleeby show plainly the sort of work which alone can lead us to an accurate understanding of the Moros, or gain us any position in their territory other than that held by mere force.

Volume ii of these publications has three parts: *The Negritos of*

Zambales, by William Allan Reed; *The Nabaloí Dialect*, by Otto Scheerer, a German, who lived for some years among these Igorot of Benguet province; and brief papers on *The Bataks of Palawan*, by Edward Y. Miller (governor there) and by former Spanish residents. Volume iii comprises early accounts (mostly of the eighteenth century) of the Igorot, by Augustinian missionaries. These accounts were collected and loaned to the government for publication by Father Angel Pérez of that order, and they are published under the title: *Augustinian Relations of the Races of Northern Luzon*. The Spanish edition, having the original texts, is of course preferable for consultation. The publication of accounts of trips and investigations by American officials in remote and mostly unexplored regions of the mountains of Northern Luzon has inspired the friars at Manila to uncover some hitherto unpublished material in their convents at Manila—a sign, incidentally, that recent rancor is being forgotten. All the above publications are splendidly illustrated with half-tones, and Dr. Saleeby's studies with facsimile reproductions of rare Moro manuscripts.

JAMES A. LE ROY.

DURANGO, MEXICO.

REVIEWS

De Monroe à Roosevelt, 1823-1905. Par le Marquis de BARRAL-MONTFERRAT. Paris, Plon-Nourrit et Cie, 1905.—xv, 356 pp.

Essais d' Histoire Diplomatique Américaine. Par ACHILLE VIALLATE. Paris, E. Guilmoto, 1905.—iii, 306 pp.

As an historical work, the first of these books would be worth scarcely more than a passing notice, were it not for the fact that it appeared originally in the *Revue d' Histoire Diplomatique*, which is the official organ of the Société d' Histoire Diplomatique, of which society the author is the secretary. The preface, too, is written by the Comte d' Haussounville, a man of some note in literary circles in France, a member of the Academy and the representative in that country of the banished house of Orleans. The thesis of the book is republican territorial expansion, and, as might perhaps be expected, the subject is treated from the alarmist's point of view. Let the distinguished pre-facer speak first.

The Comte d' Haussounville recalls a journey which he made to the United States twenty-four years ago, as a representative at the York-town centennial of an ancestor who participated in the Revolution. He says that he has a vivid recollection of a "conversation had with a certain M. Blaine, forgotten to-day." Speaking of the construction and neutralization of the Isthmian Canal, Mr. Blaine is represented as saying, "We shall never consent to Europe concerning itself in guaranteeing its neutrality. You may pierce the isthmus if you like, but we must hold it." Disquieting as this announcement was, the writer's apprehensions did not lead him to foresee the day when "the United States would contest with us the right of guaranteeing with them the neutrality of the Panama Canal, and perhaps concern themselves in guaranteeing that of Morocco." How "this young power" has come to mix little by little in the affairs of the old world, he says, M. de Barral's book shows. Samoa, Hawaii, Cuba, the Philippines, the Russian Jewish question, intervention in China, Syria and Morocco were but stepping-stones to the higher walks of world politics. The personification of this policy is Mr. Roosevelt, leader of a "party ready to seize every occasion, indeed every pretext, to mix in the politics of the old

world." And there is still another source of apprehension for the Comte d' Haussonville—the "yellow peril." This thought leads him to inquire: "What will become of Europe pressed, as between the jaws of a vice, in the west by the United States, in the east by Japan?"

The quotations from the preface indicate the spirit and purpose of the book. It discusses the acquisition of Texas, New Mexico and California (which the author styles the "phase of encroachment"), the Cuban question (styled the "aggressive phase") and the acquisition of Samoa, Hawaii and the Philippines ("the world phase"). As would be expected from a book by a Frenchman, much space is given to the interoceanic canal. The recent Venezuelan imbroglio with the allied European powers, the Santo Domingo affair and the expedition to China close the historical narrative. The last chapter is chiefly made up of extracts from the speeches and messages of President Roosevelt, quoted in order to show that Mr. Roosevelt is "completely the echo of the American mentality," which, as the earlier pages have declared, is characterized by a spirit of aggression most dangerous to the rest of the world.

If the preface is tinged with a somewhat deeper shade of melancholy than the body of the book, it is no doubt due to the fact that the prefacer did not, as he says of M. de Barral, write with the "documents in hand." But a casual examination of M. de Barral's work will show that the "documents" must frequently have slipped out of hand, or that they were often made to carry a meaning which does not belong to them. Many of the errors and misstatements, which are thickly sprinkled through the pages, might have been avoided if the writer had taken the trouble to read carefully a standard history of the United States and to refer to some of the usual authorities. Thus, filibustering expeditions are frequently mentioned for the purpose of showing the supposed character of American expansion, and McGregor, of Amelia Island fame, is made (p. 30) to lead an expedition into Texas in 1816. Possibly M. de Barral confuses him with General Lallemand, who was engaged in such an enterprise about that date; but Lallemand was not an American. It is asserted (p. 17) that the United States enjoyed a "perfect tranquility" during the Napoleonic wars, from which it would seem that the Orders in Council and the Berlin Decrees are also "forgotten today." In speaking (p. 35) of President Polk's message on Yucatan of April 27, 1848, the writer apparently confuses it with Mr. Polk's earlier declaration in the annual message of 1845, which had nothing to do with Yucatan; and he says that when the treaty of Guadalupe Hidalgo was before the Senate, the president sought to have a

clause added to it, giving the United States the right to occupy Yucatan. But the treaty received the sanction of the Senate seven weeks prior to the date of the Yucatan message of April 29, and a reference to the executive proceedings of the Senate will show that no such a proposition was ever suggested or considered. The real significance of Polk's declaration as an enlargement of the scope of the Monroe Doctrine appears to escape M. de Barral entirely. Comparing (p. 86) the North and the South at the outbreak of the Civil war, he states that while the North was "of the Protestant religion," the South "belonged in part to the Catholic religion and the Latin race"—a comparison which is obviously misleading. Referring (p. 92) to the treaty of October 31, 1861, between Great Britain, France and Spain, relating to the joint expedition to Mexico, the writer charges the allies with a secret intention to place Maximilian on the throne of Mexico, in spite of the declaration in the treaty inconsistent with that intention. There is nothing in the published correspondence to show that the British government, at least, entertained any such sinister purpose. On the contrary, the instructions to her diplomatic representatives were to hold strictly to the terms of the joint treaty, and the reply of Earl Russell to the French ambassador, when he announced the intention of the emperor strongly to reinforce the French contingent in Mexico, was that he "very much regretted the step."

Perhaps the most absurd charge which the author brings against American expansion is contained in the account of the recent difficulty between Brazil and Bolivia over the Acre territory. The government of Bolivia granted to an Anglo-American syndicate a concession in the disputed territory conferring rights similar to those exercised by the chartered companies familiar in English colonial history. The writer adopts and puts forward as solemn truth a rumor, current in South America at the time, that the concession only concealed the designs of the American government to "plant itself in South America." Indeed one of the purposes of the book appears to be to strengthen in Latin America the idea that these countries are in danger of ultimate absorption by the United States.

It is a relief to turn from the work of a pamphleteer to grave historical writing. Professor Viallate, the author of the *Essais d'Histoire Diplomatique Américaine*, is a member of the faculty of the École des Sciences Politiques, where he gives a course of lectures on the history of the United States. He has the advantage, therefore, of writing with a general knowledge of his subject. He also shows an evident desire to state the facts impartially and to comment but sparingly on the motives

and policies of succeeding administrations. This characteristic is apparent in his first essay, "The Territorial Development of the United States." Within the space of about fifty pages he reviews rapidly the history of our territorial expansion, beginning with the treaty of peace with Great Britain in 1783 and ending with that with Spain in 1898. It is doubtful if there exists anywhere in English, within the same compass, a clearer or more comprehensive statement of this phase of our history. In fact it is a model of its kind.

The second essay, "The United States and the Interoceanic Canal" is the longest of the three contained in the volume. In a space of 150 pages, Professor Viallate reviews the diplomatic history of the question, using as a basis certain diplomatic correspondence of the United States, the messages and papers of the presidents and certain secondary authorities such as Keasbey's *Nicaragua Canal and the Monroe Doctrine* and Latane's *Diplomatic Relations of the United States and Spanish America*. It contains little that is new to American students of the question, but it has the advantage of bringing the subject down as late as the canal treaty with Panama in 1904. Moreover, the very judicial spirit in which the subject is examined should not fail to give European readers a juster view of the whole question. The year 1870 is indicated correctly as the date which marks the transition from the policy of neutralization (adopted for the purpose of blocking European ambitions in Central America) to the modern policy of control or ownership of the canal by the United States alone.

The story of the treatment accorded to the Hay-Herran canal treaty at the hands of the Colombian Congress and of the subsequent revolution on the Isthmus, is drawn almost exclusively from the published diplomatic correspondence and messages of the president. It is therefore based on the most trustworthy sources now at hand, and it is impartially written.

The final essay, "The Spanish-American War and the Annexation of the Philippines," follows closely the published diplomatic correspondence of the United States and Spain. The result is probably as satisfactory as the existing sources of information at present permit. Thinking possibly that the subject of the enforcement of the neutrality laws of the United States, during the last Cuban insurrection, involves primarily the examination of a legal rather than a diplomatic question, the author barely alludes to it.

The chapter relating to the peace negotiations at Paris in 1898 is probably the least satisfactory of any part of the essay. It appears to be based almost exclusively on the telegraphic correspondence between the

American commissioners and the State Department during the sessions of the conference, and practically not at all on the official protocols of the conference and similar documents.

The methods of Professor Viallate are those which are familiar in the standard French writers on diplomatic history. It is, in the main, *précis*-writing of the best class, summarizing successively diplomatic correspondence, presidential messages and other state papers.

JAMES F. BARNETT.

GRAND RAPIDS, MICH.

Philippine Life in Town and Country, By JAMES A. LE ROY.
New York, G. P. Putnam's Sons, 1905.—x, 311 pp.

The title of this book hardly does justice to the contents. It understates the scope of a work which, though modest in intent and volume, is much more than a surface sketch of facts obvious to the eye in our eastern dependency or even ascertainable by an observer more deeply versed in the external social phenomena of the Philippines. The book deals with the ethnic and historical background of present conditions as well as with those conditions themselves, with a clearer insight into the philosophical relation of the past to the present and a juster appreciation of the respective values and functions of the three great factors in the Philippine problem—native society, Spanish tradition and American ideals—than any other work that I have seen upon the subject. The author has written in a spirit of academic honesty, with a delicate sense of truth exceeding the merely reportorial honesty which pervades much of our Philippine literature. There has been no disposition either to overlook obvious duty in recording disagreeable facts or to scrape up intimacies with untoward and not fairly representative incidents. In a word, the book is written with candor and good faith, and though it contains statements and opinions in matters of detail that may still be subject to controversy, it gives the truest general view of Philippine conditions, and probably the one most easily understood by an average reader, that has yet been presented to Americans.

There is at the outset a frank recognition of the early achievements of the Spanish colonial policy—a policy inspired by a higher ideal than that of the modern materialistic school of colonial theorists—but there is also a clear statement of the limitations which made that policy unfitted for the Philippines of today. In some spheres of influence Spain accomplished more in the Orient than has either England or Holland.

The fact that the Filipinos should have progressed under Spanish rule to the point where they should formulate demands so unique in the Orient

[for political liberty, free press, free education, and representative institutions] is in itself the highest praise for Spain.

When shall we hear of those things from the Javanese, or from the Malays of the Straits? Racial origins and blends are discussed in their important practical aspect, as influencing the sentiment of common nationality among the diverse Filipino tribes, and a liberal interpretation is given to data evidencing this sentiment. The descriptive chapter upon a typical Filipino community is an accurate picture of concrete conditions in the Christian provinces. The chapter upon *caciquism*—or native political boss control—touches upon the fundamental civic problem of the Philippines, the tendency to establish petty absolutism under democratic forms of government wherever the restraining power of central authority is withdrawn. From this topic there is a logical transition to the chapter upon public schools, as a constructive remedial agency necessarily accompanying the political institutions which we, in harmony with the best elements of the Filipino nation, desire to establish in the archipelago. The religious question is discussed, under both its moral and its local political aspect, with a frankness not likely to give offense to any part of the American people. Economic conditions and prospects are considered in a later chapter, and the conclusion deals with the position of the Filipino in the Orient.

The distribution of topics has occasioned some repetitions, where the author has evidently considered it necessary to revert to similar thoughts or facts to illustrate different points as they came up, and the connection between successive paragraphs must sometimes be found by reference to the ultimate implications of the argument rather than to the immediate context. A feature that adds life and interest to the book is the frequency with which quotations from Filipino authors and minor writers are used to illustrate conditions described or to enforce statements of native opinions and ideals.

We should know more about the Philippines if less had been published about them during the last eight years. Many writers have quite overlooked the fact that the islands were not created by Admiral Dewey. The Philippines have a complex and ancient history, like the rest of the world. As a topic of partisan debate, there has been much unconscious and some conscious perversion of truth regarding them ever since the American occupation. The same old arguments that formed the basis of controversial literature with regard to the negro in the closing days of African slavery, have been refurbished by colonial experts to support a system of political and industrial absolutism by the white race in the tropics. The irritation with which

some writers regard the American attempt to develop political autonomy and a system of really free labor in the Philippines, is due to the fact that it involves a direct challenge and denial—at least a tentative denial—of the truth of justification by color as a colonial dogma. I am inclined to think that Mr. Le Roy, who spent two or three years in the Philippines with an open mind toward all theories, is a more faithful and competent narrator of conditions in that country than a man with broader experience in tropical life, but less experience with the really unique conditions in the dependency which we received from Spain, less sympathetic appreciation of our national ideals with regard to that country, and a preconceived theory as to the inherent incompetence of the tropical races. The best colonial experts fall into grave errors. One recently supported an argument in favor of indentured labor upon figures of comparative production in different colonies, in which the value of sugar in Hawaii, for instance, with a protection of between thirty and forty dollars a ton, was balanced against similar values in the Philippines, with no protected market open to them. I am not aware that any of these fundamental errors occurs in Mr. Le Roy's book. A minor statement might occasionally be qualified. In contrasting the social position of the Filipino woman with the typical woman of the Orient, whom we are to conceive as a veiled and shrouded recluse, and ascribing this superior status to Christian conceptions introduced by the friars, it should be remembered that among the masses everywhere in the East women hold a position of influence—especially of economic influence—in the family. Javanese women have about all the freedom they care to use, and in parts of Sumatra matriarchy exists. The Burmese woman is the business head of the house, as is often the Chinese woman of lower rank. But these facts do not affect the truth of the general statement that Christianity made prevalent among Filipinos of higher rank social customs almost identical with those of Spain, and familiarized the ruling section of the nation with European ideals of womanhood and habits of thought towards the family relation. More stress might have been given to the economic bases of social progress, which are very important and not to be overlooked as a corollary to universal education. White immigration and the contingency of American capitalistic colonization in the Philippines are topics that have not been considered. But their chief importance as yet is prospective, and so fairly outside of the scope of the book—which is to present life in the Philippines as a contemporary social movement, to be studied in its deeper manifestations as well as under its purely external aspects.

VICTOR S. CLARK.

WASHINGTON, D. C.

Some Ethical Gains through Legislation. By FLORENCE KELLEY. New York, The Macmillan Company, 1905.—x, 341 pp.

Florence Kelley of the Illinois bar is rather less known to the public than the Mrs. Kelley of Hull House, of the Nurses Settlement, of the Illinois Bureau of Factory Inspection and of the Consumers' League. But it is in the first-named capacity that she has put into this admirable little volume the boiled-down results of her experiences in the other four. The book might have been called "A Summary of Gains Still to be Made," since it would be impossible for Mrs. Kelley, even if she wished, to write about the protection of childhood, the right to leisure, and rights of purchasers, without giving constant expression to her sense of the immense distance which society has yet to travel. Yet we must do the author the justice to admit that, radical reformer though she is, and impatient though she remains with the stupidity and callousness which prevent further immediate advances, she does in this volume record many substantial gains, and that the standpoint throughout is that of one determined to make the most of such progress as can be found. To be sure, this is not exactly to class even the Mrs. Kelley of this volume with the Giffens, Lubbocks and Carnegies whose statistics and generalizations take the form of one grand paean of triumph because of what democracy and industrialism have already done for the working classes. The demonstration that there really are gains is here based upon much more severe tests as to what constitutes a gain, and much clearer appreciation of the reservations with which any statement of them is to be made.

It seems a little startling that Mrs. Kelley feels constrained to begin her discussion of the right to childhood with such elementary premises as that if the children perish in infancy they are obviously lost to the Republic as citizens; if, surviving infancy, they are permitted to deteriorate into criminals, they are bad citizens; if they are left illiterate, if they are overworked in body and mind, the Republic suffers the penalty. And yet among the recent gains of our American communities it becomes necessary to point to remedial legislation, prosecutions and convictions having for their sole object to stop the exposure of infants at night, in cold weather, in the arms of begging women. The legislation of the last few years again, intended to secure improved housing for the people of New York City, although in Mrs. Kelley's opinion it is still wholly inadequate, constitutes one of the fundamental ethical gains of our generation. And the reason which the author gives for this judgment is that it marks the beginning of that social protection of infant

life without which the right to childhood is illusory, and for want of which thousands of potential citizens in the great cities within the last half century have been lost to the Republic.

Thus simply and fundamentally does the inquiry begin, and it proceeds relentlessly through the employment of young children in tenement houses, in domestic work, in street occupations, including the telegram and messenger service, in retail trade and in manufacture, with special paragraphs on the glass bottle industry. The legislative and administrative advances, the growth of public sentiment, and the recent beginnings of coöperation between trade unions and philanthropists are all recorded. And yet, as the story is told, the background of outrageous injustice, evils not yet remedied, children still unprotected, seems to stand out more and more darkly, and the gains actually made somehow seem pitifully small. The author gives us the impression of having intended to produce the contrary effect, of having exercised much restraint in her use of damaging evidence, and of having seized eagerly upon every humane decision, every enlightened statute, every disinterested declaration by labor union or public spirited philanthropist. And yet the constantly recurring note is in such phrases as "the inadequacy of the best measures yet enacted," "only initial steps have been taken," "unfortunately there is as yet no appropriation . . . to enforce the law," "so far as they are enforced."

The chapters dealing with the right to leisure give just ground for greater confidence in the possibility of ethical gains through legislation; and perhaps the most important part of the volume is that which deals with the judicial interpretation of statutes regulating the hours of work of public servants, of statutes restricting the hours of labor of women and children, and of statutes, which are now for the first time applied by the courts, restricting in certain occupations, in the interest of public health, the hours of labor of adult male employees working for corporations or individual employers.

In an appendix Mrs. Kelley has published the text of four of the more important of these decisions, including the decision of the Supreme Court in the case of *Holden v. Hardy*, February 28, 1898, upholding the Utah statute which forbids the employment of working men for more than eight hours per day in certain occupations, as being within the police power of the state, and not an unconstitutional interference with the right of private contract or a denial of due process of law or of the equal protection of the laws. Of this decision Mrs. Kelley says that it

did but open the way, by sustaining a statute affecting a few hundred men in a state not highly developed industrially and by affording a precedent, national in its scope, whereby may be done over again successfully work which, in several states, had once been done in vain. Yet it assures ultimate success to the long striving for the statutory enactment of the right to leisure.

Of the argument in favor of the right of women to the ballot, it is only necessary to say that it justifies its incorporation in this volume, which is to say that it differs materially from the stock arguments of the advocates of equal suffrage. The usefulness of women on public boards and commissions is easily shown. Indeed it might very properly have been assumed. It is further shown, however, that in states in which women do not vote they are not usually appointed to salaried positions of this kind, even where the duties required are such as women are preëminently fitted for, and where the number of available women is very large. In educational work especially and in the protection of children there are tasks to which women are naturally adapted and from which they are practically debarred by their status as non-voters. Except in the assertion of the right of women to share in the enactment of marriage and divorce laws, the chapter rests the case for the recognition of the right of women to the ballot on the positive advantages which would demonstrably follow. In the case of marriage and divorce laws, it is asserted that

since the points of view from which the subject is approached by men and women are fundamentally different, that law alone can be an essentially just and righteous one which is so framed as to satisfy the needs of both men and women and to rest upon their agreement.

In the following paragraph, however, an attempt is made to show that the existing chaos in legislation affecting marriage and divorce in the different states may be "due to the enforced silence in matters affecting legislation of half the people affected by them." The argument is thus brought back into harmony with the general trend of the book, which emphasizes everywhere social gains rather than abstract individual rights.

The closing chapters deal with the rights of purchasers, showing that they are social rights, but that as a preliminary to their effective enforcement it is essential that the courts be enlightened and instructed concerning conditions as they exist. These chapters discuss the trade union label and the movement for enlightening purchasers which is represented by consumers' leagues.

The volume as a whole gives us new hope that the intolerable conditions which we have suffered to survive or to develop will not forever remain ; that there is a social conscience which is slowly awakening and which has power to influence electorates, legislatures and courts ; that, while we have as yet felt its power only here and there, we have every reason to expect these exceptional and sporadic gains to multiply and extend until we are ready to deal through legislation and the courts with all those problems which lie by their nature beyond the possible scope of individual effort and voluntary coöperation.

EDWARD T. DEVINE.

Corporations et Syndicats. By GUSTAVE FAGNIEZ. Paris, Victor Lecoffre, 1905.—viii, 198 pp..

Monopolies, Trusts and Kartells. By FRANCIS W. HIRST. London, Methuen and Co., 1905.—viii, 179 pp.

Les Syndicats Industriels en Belgique. By GEORGES DE LEENER. Brussels, Misch et Thron, 1904 (second edition).—xxxii, 348 pp.

In these days everyone must write on industrial combination ; hence a large number of surprisingly bad books. Two of the above belong to that number.

Fagniez's *Corporations et Syndicats* deals with employers' associations and trade unions in France. The object of the book, so far as it has any, seems to be to show that the development of these organizations has been similar to that of the mediaeval gilds and corporations. After giving a superficial sketch of gild history, the author presents a few facts concerning organizations of employers, and devotes the second half of his book to trade unions and their position under the French law. The point of view is thoroughly conventional ; there are the usual complaints—restriction of apprentices, limitation of output and the like offenses ; there is the usual commendation of trade schools, sick and death benefits and other harmless diversions of "good" unions ; but clear description and analysis of significant phenomena there is none. The book throws no light on anything and reaches no useful conclusions. Why it should have been written it is hard to see.

Hirst's *Monopolies, Trusts and Kartells* is a reactionary book, written largely from the lawyer's standpoint, to show the relative unimportance of monopoly. Monopoly is not defined, and the word is used in a shifting and uncertain sense. Natural monopolies seem to be of small

importance, anthracite coal to the contrary notwithstanding. It is not altogether easy to be sure of the author's position, but if I understand him rightly, the sovereign remedy for the ills of industrial combination is free trade, combined with a system of national waterways to curb the railroads. Why the railroads need curbing is not clear, as they are not monopolies, but among other things are subject to competition of "*potential lines*." This surpasses the ingenuity of even the best railroad lawyers in the Senate; surely it is potential competition run mad.

Free trade, however, is Mr. Hirst's real specific. He has a veritable obsession of free trade, and it leads him to some strange conclusions. It may startle American iron and steel makers to learn that "the industry on its present basis is dependent on the tariff" (p. 133). We had not blamed the wicked tariff with anything worse than the exorbitant profits often made by the steel men. Scarcely less surprising is the information, in another connection, that the success of the Standard Oil Company "is exactly parallel to that of the Anthracite Coal Combination" (p. 130). Chewing gum and Royal baking powder, as products of non-protected trusts, furnish our free-trade critic an insoluble riddle, though he is undaunted by the International Thread Company. Possibly further acquaintance with a dozen or so other non-protected trusts might shake his confidence in Mr. Havemeyer as the ultimate authority on the genesis of trusts. But enough of such criticism.

Mr. Hirst's book is evidently the product of considerable study, but its analysis is not clear and its discernment of actual tendencies is *nil*. Probably few careful students doubt the persistence of competition, but who cannot see that the régime of many small producers is yielding to a condition in which a few great ones alternately compete fiercely and then combine for mutual advantage?

De Leener's *Les Syndicats Industriels en Belgique* is a work wholly different in method and point of view. It first deals with the nature of industrial progress and the place of combination in such progress. The monopoly régime of the guilds yielded to the free competition of the industrial revolution, which brought productive anarchy in its train. This in turn is yielding to a system of combined production more or less monopolistic. The author recognizes the evident drift toward combination, but does not go to the extreme of maintaining that all industry will straightway organize itself in monopolies.

After propounding his general theory, M. de Leener takes up the Belgian syndicates in detail, classifying them as *ententes*, which are tacit and occasional agreements; pools, or permanent syndicates with-

out formal conventions; cartels, or syndicates based on written contracts; and trusts, in which the combined concerns are actually merged in one. The fourth class is scarcely represented in Belgium. Many examples of the others are given, illustrating the origin, the relations, the advantages and the disadvantages of the various forms of combination, and showing how one form passes over into another with a constant tendency to closer union. Instead of dividing the field of industry into two sharply contrasted parts, the competitive and the monopolistic, the author shows the various degrees by which competition shades off into monopoly. This view has the advantage of corresponding with facts. Among the most interesting combinations described are those in the fuel, steel, cotton and match industries. Appendices give a considerable number of illustrative documents. Among the reasons given for the formation of the Belgian combines, American competition is given a prominent place, and the cheapness of American production is attributed chiefly to our superior organization.

M. de Leener's conclusions are highly favorable to the syndicates. Affording the only means of escape from the anarchy of competitive production, they are advantageous alike to the producer, to his employees and to the public. Their stability is shown by the manner in which they came through the Belgian industrial crisis of 1901. That there may be dangers in the movement the author grants, but he holds the law adequate to meet them. A more careful study of American conditions might lead to a less confident generalization as to the "momentariness" of the abuses with which industrial syndicates are charged.

As a whole this is a useful book. The method used involves much wearisome repetition, and the facts do not always warrant all the inferences. Notably, the treatment of prices is inadequate. In covering so broad a field, it is inevitable that little more can be given than a somewhat superficial description. While such studies have their value, the most useful work in this field to-day consists in thorough and detailed studies of particular industries. From such works we may derive the information on which to base valid general judgments.

HENRY RAYMOND MUSSEY.

BRYN MAWR COLLEGE.

The Principles of Money and Banking. By CHARLES A. CONANT. New York, Harper and Brothers, 1905.—Two volumes: xv, 437 pp.; viii, 488 pp.

There has not appeared heretofore, at least in the English language, a *Principles of Money and Banking* with quite so wide a scope as the new two-volume work just published by Mr. Conant. The first volume contains three books on money, the second, three on banking, while the whole consists of forty-five chapters. The first book, styled "The Evolution of Modern Money," adds little of importance to the existing literature of the subject, unless certain new detail of purely antiquarian interest should be regarded as important. There is in this book, however, one striking peculiarity of analysis which calls for comment. Ordinarily money is said to have four functions, if that of "store of value" is included, but Mr. Conant recognizes five "essential" functions (vol. I, p. 20). The extra category arises from the author's separating a function of "standard of value" from that of "common denominator of value" on the one hand and from "standard of deferred payments" on the other. Walker raised the question (now properly regarded as merely a question of words) whether the second function performed by money should be referred to as that of "measure" (standard) of value or should rather be designated as that of "common denominator" of value. Mr. Conant, however, holds that there is, first, a function of common denominator of value and, secondly, an additional function of standard of value, which is yet distinct from that of standard of deferred payments. From the reviewer's standpoint, this innovation serves as an example of the uncritical thinking which is common in the work wherever it deals with questions of analysis or theory, as distinguished from pure description of monetary institutions and practices.

Judged from any viewpoint, the fundamental weakness of this work is its extreme and loose eclecticism. This defect shows most prominently in book ii, upon the "Principles of the Value of Money." Not uncommonly almost whole chapters are composed of a series of quotations connected by a text which does not contain a great deal more than the author's explanation of the very points made in the quotations themselves. Thus on page 113 (vol. I), Mr. Bolles is quoted in support of the affirmation that gold coin will lose none of its value when melted into bullion. It is difficult to see why any particular writer should be given credit for such a well-known fact. Mr. Conant next points out that the bullion could not be spent in ordinary trade without

first being coined again. This obvious truth is then reinforced by a citation from the far removed and wordy Karl Marx:

That money takes the shape of coin, springs from its function as the circulating medium. The weight of gold represented in imagination by the prices or money-names of commodities must confront those commodities, within the circulation, in the shape of coins or pieces of gold of a given denomination.

Thus we learn on authority that to spend your gold over the tradesman's counter you must have it coined.

Moreover, examples of positively inappropriate, as distinguished from merely wasteful, quotation are not lacking. Thus on page 167 (vol. i), in support of the Ricardian theory of specie distribution—which Mr. Conant accepts as correct, subject to two qualifications which advocates of this theory will readily grant—the author cites from Professor Laughlin's *Principles of Money* a passage which was designed by its author to be a direct refutation of the Ricardian theory, and which can be regarded in no other light.

Numerous and important misapplications of the "principle of marginal utility" may be found in the work under review. Here again the fault would seem to lie with the author's uncritical eclecticism. It is impossible to say exactly what Mr. Conant means by the "principle of marginal utility," although in his preface (page vi) he explains that he regards his application of it to monetary problems as one of the two distinctive features of his work. The first application comes in the preface itself (page vi), where it is asserted that the "evolution" of money from cattle to perfected gold coin "has followed the principle of marginal utility," which, if it means anything, is only an extremely obscure way of saying that gold is the most useful form of money in a rich and developed society. Other instances of peculiar misuse of the phrase may be mentioned. Thus, on page 214 (vol. ii) we are told that "it is for the banker to determine the relative marginal utilities of enterprises." Why refer to relative money-making possibilities as relative marginal utilities? And again (vol. ii, p. 389) "The law of marginal utility will . . . drive the buyer with almost unerring instinct to the seller who sells the best goods at the lowest prices." This passage is unique in that it uses the phrase "law of marginal utility" as a precise synonym for plain business common sense. In his chapter on the distribution of money, Mr. Conant announces at the outset that "the essential principle which governs the distribution of money between communities is the so-called law of marginal utility" (vol. i, p.

245). The only meaning this can have is that the relative stocks of specie in different regions will come to an equilibrium when specie reaches in each region the same marginal utility as in every other region. If marginal utility is to govern specie distribution, this is the only way in which it could do so. It must be stated, however, that Mr. Conant does not suggest that this is actually the way in which marginal utility governs specie distribution, for in fact his chapter lacks any precise thesis regarding the manner of the action of marginal utility.

The per capita stock of gold money in France is about two-thirds larger than in England, though perhaps England does two-thirds more business per capita than France. In harmony with the quantity theory and with the received theory of specie distribution, this phenomenon is explained by reference to the fact that in England the bank check is far more generally used as a substitute for standard money than in France. Since the demand for specie is thus limited, in England, a smaller relative supply is necessary to maintain the exchange value of specie at the world level. Mr. Conant claims that this explanation is "inadequate and unsatisfactory" (vol. i, p. 256), and proceeds to make it adequate by appending the explanation that the reason why a larger supply of specie is required in France is because the marginal utility of specie must be kept down there, since the lack of the use of credit instruments tends to raise the marginal utility of specie. Here Mr. Conant has merely substituted "marginal utility" for "exchange value."

With respect to the general drift of book ii, on the value of money, it might be said that formally it is in large part built up as a criticism of the quantity theory, that is to say, of various cruder forms of that theory set up from time to time by the author. But though this supplies the author with abundance of subject-matter for discussion, the net positive result of the book—aside from the marginal utility wastage—is really such a supply-and-demand theory of the value of money as would be called the quantity theory by any present-day economist who accepts that doctrine. Every objection to the various "cruder forms" of the theory brought forward by Mr. Conant, would, I dare say, be granted by President Walker, were he alive. It is true that Mr. Conant prefers to define money in such a way as to make it necessary for him to regard an increase in bank or government notes not as an increase in the supply of money but as a cause operating to reduce the demand for money, *i. e.* standard money. But the net result is the same whether such notes are regarded as increasing the supply of money or as diminishing the demand for it. Whether the carefully safeguarded

supply-and-demand theory which is the net positive result of Mr. Conant's reasonings ought to be called a quantity theory, is after all a question of words. It certainly is the quantity theory as understood by many contemporary economists. In the judgment of the reviewer, the verdict of time will be in favor of retaining for it the designation of "quantity theory."

In book iii, entitled "The Evolution of Monetary Systems," Mr. Conant discusses, among other things, the question of international bimetallism. Considerable sympathy is shown for the theoretical claims of bimetallists, and the author admits (vol. i, p. 356) that none of the historical experiments with bimetallism have fully tested its possibilities. Also the compensating action of the French bimetallic system upon the world's commercial ratio is conceded (vol. i, p. 340, *et passim*). The author regards bimetallism as a dead issue, and pins his faith to the "gold-exchange" standard, as the means of ridding the world of the evil of the fluctuating exchanges between gold- and silver-using countries. His description of the gold-exchange standard is an able and interesting discussion of a new currency system, in the devising of which he himself played a prominent part.

Mr. Conant's second volume, on banking, is a more satisfactory piece of work than the volume on money. One reason, perhaps, is that here the author is concerned to a greater extent with description than with theory, and with the description of financial institutions and practices of which he possesses unusually minute and thorough-going knowledge. The admirable reach and scope of this part of the work will make it very useful.

In conclusion it may be said that it was not to be expected that a work like Mr. Conant's, in a field often traversed before by others, should be composed in great part of new theory or of new description. On the other hand, merely to bring into juxtaposition a larger amount of related material than any of its predecessors does not in and of itself entitle a book to high esteem. While Mr. Conant's work possesses the virtue of great comprehensiveness, it is the opinion of the reviewer that, to be of the greatest use to the general reader and the university student alike, a book on money and banking should above all exhibit that unity and precision of theory which is the greatest lack in Mr. Conant's work.

A. C. WHITAKER.

STANFORD UNIVERSITY.

Systèmes Généraux d'Impôts. Par RENÉ STOURM. Deuxième édition, revisée et mise au courant. Paris, Guillaumin et Cie., 1905.—vi, 430 pp.

Although following the same general plan and proceeding from the same point of view as its predecessor of thirteen years ago, the new edition of M. Stourm's well-known work includes so many changes in details of statement and so many additions of new material as to constitute almost a new book rather than a second edition. The aim in rewriting has been to bring the work abreast of the progress in fiscal notions and in fiscal practices that has been made since 1893. As regards the latter task, the purpose has been in large degree realized. For in part ii, the most notably altered and extended portion of the work, attention has been given to the revised or newly installed taxes on income in Prussia and various other German states; to the taxes on property which now supplement the income taxes in Prussia, Holland and the Swiss cantons; to the extension of exemptions in the English income tax lists, with the increase in rates that has resulted from the expanded budget arising out of the South African war; to the introduction of progression in the inheritance tax arrangements of England; and finally, as regards France, to the increasing and, in the author's mind, regrettable reliance of the budget on the fiscal monopolies, to the thoroughgoing revision of the drink taxes, to the increase of the customs dues on food and to the recent experiences with the "impositions des valeurs ostensibles."

As regards tax theory there is nothing new. As in the first edition, aside from French works on the subject, little or no specific consideration is given to the literature of recent decades. This conscious neglect, arising perhaps from a distaste for the hypothetical analysis so prominent in the development of recent theories, manifests itself in characteristic fashion in the author's dictum that no doctrine of general applicability can be laid down with reference to income taxes, where in his view local peculiarities in environing conditions are the important considerations. Indeed, in so far as he permits himself to generalize, it is largely the outcome of the good, old-fashioned conviction that taxation should be used, not as an engine of social or economic reform, but purely and simply as a means of obtaining revenue. Contemporary happenings have in his mind only confirmed the necessity of again proclaiming this principle. This principle once elevated to its proper position, the attaining of the great desideratum of justice in taxation becomes a matter of moderation and proportion in rates of taxation and of a minimum of taxation on the prime necessities of life.

In general, the work possesses the merits as well as the defects of the earlier edition. It is characterized by the same simplicity, clearness and vivacity of style, as well as by the same off-hand dismissal of views that do not accord with the author's own. Its exposition of French tax problems and its criticism of certain tendencies in French practice leave little to be desired. But its very merit in this respect is the measure of its shortcomings as a treatise on general systems of taxation. The general theoretical discussion and the description of foreign tax systems and experience are not only summary and incomplete in themselves, but are also significantly subordinated to the explaining and solving of French problems. This tendency comes out nowhere more clearly than in the last chapter, in which the recommended fiscal reforms all have reference strictly to French conditions and needs. This may be entirely germane to the author's main purpose, but in such case some modification of the title of the work would not be amiss.

Roswell C. McCREA.

BOWDOIN COLLEGE.

Agricultural and Pastoral Prospects of South Africa. By OWEN THOMAS. London, Archibald Constable & Co., Ltd., 1904.—viii, 335 pp., map.

The Business Side of Agriculture. By A. G. L. ROGERS. London, Methuen & Co., 1904.—159 pp.

The History of Agriculture in Dane County, Wisconsin. By B. H. HIBBARD. *Bulletin of the University of Wisconsin*, no. 101, 1904.—146 pp.

Each of these three volumes is an important contribution to the literature of agricultural economics. A historical and comparative study of the agriculture of the various countries of the world is the necessary basis for any comprehensive treatment of the economic problems in agriculture; and these volumes, treating of widely separated countries where soil, climate, population and facilities for marketing the produce are very different, are especially useful in helping the student to distinguish between the rules which apply only to specific localities at a given time and the underlying principles which are true for all places and at all times.

The principal topics included in Mr. Thomas's discussion of the agricultural and pastoral prospects of South Africa are the soil, the

climate, the characteristics of the people, the products, the markets, the organization of agriculture, including coöperation, agricultural credit and land tenure. The book will prove interesting and valuable both to the student of economic geography and to the student of agricultural economics. The author draws many interesting contrasts between England and South Africa, which emphasize the relativity of all the rules of husbandry. For example, whereas deep plowing is an indication of sound farming in England it seems to be detrimental in South Africa. The principal field crops are wheat, maize, Kaffir corn, potatoes and tobacco. Experiments are being made in the cultivation of cotton, and it is believed that the "cotton industry has an exceedingly bright future." But none of these products have made any appreciable impression as yet upon the world market and there is little chance that they will. "South Africa may be said to be a barren country. The exceptions to the rule lie in the more humid districts From the agricultural and pastoral point of view, the weather of South Africa is extremely unsatisfactory." Stock farming is the most profitable industry in most parts of the country, and the conditions for this industry are not especially attractive. The pastures are so poor that from ten to twenty acres are required per head of cattle. The climate is such that the cattle must be able to withstand great and sudden changes of temperature, which makes the development of the more valuable types very difficult.

While specially recommending South Africa as a stock-raising country (when animal disease is eradicated or at least controlled), I do not wish to imply that it is the best or even the second best stock-raising country in the world. If, however, it is selected by the immigrant for its healthy and bracing climate, and its many other advantages over other countries, then I say that (of all farming industries) stock-farming undoubtedly is the most promising.

The size of farms in South Africa may be of interest to those who are now interested in the disposition of those parts of our public domain which are fitted only for grazing purposes.

There are three kinds of farms: (a) farms under 1,000 acres; (b) farms of about 3,000 acres; (c) farms of 6,000 acres and upward. Where the veld is poor, a farm of 40,000 acres is not uncommon. But the majority of farms contain about 3,000 acres . . . Land which will carry only one beast to twenty acres, must be farmed on a large scale; for 1,000 acres are equal to no more than fifty acres in England. A farmer, (a stock-farmer especially), who only had a fifty-acre farm in England, would be a very small

farmer, and a South African farmer who only had a 1,000-acre farm would be his equal. This is the reason, and the only reason, why the Boers are not satisfied with less than 3,000 acres. They cannot live on less.

Mr. Rogers's book on the *Business Side of Agriculture* is a study of the economic problems of the English farmer, with especial reference to the methods of marketing farm products. The first chapter deals with the farmer and his markets. The fact is especially emphasized that the English farmer is a business man, that he "seeks to make money exactly as the manufacturer does." It is necessary for the English farmers to be distinctively commercial agriculturists, because they are practically all tenant farmers and invariably pay a cash rent, and because they depend more largely upon the markets for the articles of every-day consumption than do the farmers of most other countries. These demands for money make it necessary for the farmer to center his thought and energy upon the one problem of putting upon the market those products which will best replenish his bank account. Chapters ii and iii are devoted to a discussion of the "traditional methods" of marketing the various products of the farm, including cereals, hops, fruits, vegetables, live-stock and live-stock products. Especial attention is given to the methods of marketing wheat in America and in England. The great variety of weights and measures which still remain in use in the rural districts of England and the different methods of making sales are described in considerable detail. But to the English farmer the marketing of live-stock and dairy products is more important than the marketing of grain. "Barely one-seventh of the supply of wheat consumed by the nation is grown in these islands, while more than one-half of the meat eaten at home is home-bred." There are two methods commonly used in disposing of live-stock. The first is by direct sale; the second by auction. Where the first method is used the custom is for the seller to seek his purchasers by advertising widely in the agricultural and other newspapers. The most common method of selling live-stock, however, is by auction. The auctions take place most commonly at the markets which are found in nearly every large town. The final chapter is devoted to a discussion of "some of the schemes that have been devised in recent years by persons or organizations interested in the prosperity of the agricultural classes to assist them to dispose of their produce to a better advantage."

Dr. Hibbard's monograph is an economic study of the agriculture of Dane County, Wisconsin, from the earliest settlement of the country to the present time. It traces the changes which have taken place in the

system of farming and seeks to find the causes of these changes. The settlement of Wisconsin, the character of the immigrants, the selection of land and the precautions taken against land grabbing are interesting subjects taken up in the introduction. The discussion of the agriculture of the earlier period centers about wheat production, whereas that of the later period centers about the development of the dairy industry, the introduction of tobacco culture and the rise and the fall of the hop industry. The main object of this monograph is to outline the economic influences which made necessary the transition from the one-crop system, with wheat as the staple, to the complex farm organization of the present time, with cheese production, butter production and tobacco culture as locally specialized industries superimposed upon a basis of mixed farming. The book emphasizes the fact that the welfare of the farmer is closely dependent upon the industrial and commercial conditions in the larger world of which he is a part; that in this larger world changes are constantly taking place which affect the prices of the products which the farmer has to sell and upon which his profits depend; that, as a result of these changes, the lines of production which are at one time most profitable may, at another time and under changed conditions as to market relations, prove relatively unprofitable; and that the farmer must ever be alert if he would so adjust the organization of his farm to the demands of the market as to secure the largest profit. It is shown that the conservatism which leads the farmer to adhere to obsolete customs, when it is clearly to his interest to reorganize his farm operations, is one of the reasons why the necessary economic changes cause so much loss and suffering; but the difficulties which the farmer has to meet in readjusting himself to changed conditions are also pointed out. It often happens that the necessary reorganization is expensive and that the farmer has not the money and can not secure the credit necessary for making the change. And, again, the conditions which influence the prices of farm products are so complex that it is very difficult, if not impossible, for the farmer to distinguish between temporary and permanent changes in the prices of his produce. This proved to be especially true in the hop industry. The book impresses upon the mind of the reader that the farmer must not only be alert in the carrying out of the operations of the farm, but he must be a man well informed on the price-determining forces, and an habitual thinker on the problems of farm economy, if he is to secure from his land and labor the greatest possible profits.

HENRY C. TAYLOR.

UNIVERSITY OF WISCONSIN.

The City the Hope of Democracy. By FREDERIC C. HOWE.
New York, Charles Scribner's Sons, 1905—xiii, 319 pp.

Unlike the reactionary radicals of the Kropotkin school, who regard the present tendency toward concentration of population as a transitory, pathological condition, soon to give way to an equally marked movement of population toward the fields and villages, Dr. Howe believes that urban development is in its infancy. His calculations of the probable development of the future outrun the visions of H. G. Wells and John Brisben Walker. Another century will multiply ten-fold the population of cities like New York and Chicago; it will increase in less degree, but nevertheless many fold, the population of the smaller cities. Manhattan Island will at the close of this century be a mass of skyscrapers devoted to business purposes, while the population will find homes fifty and a hundred miles away in the surrounding country.

Prophecy by its nature eludes criticism; its acceptance or rejection depends upon individual temperament. It may nevertheless be not amiss to point out that the urban development of the last century has gone hand in hand with the extension of cultivation to virgin lands. Under the soil-robbing methods of western agriculture, a diminishing proportion of the population has been able to provide food and raw materials in sufficiency, and the superfluous agricultural population has drifted to the cities. The world has not yet exhausted its richest lands; extensive cultivation, with its immense product per unit of labor, will undoubtedly permit still further concentration. But we already see signs of a change in agricultural methods which requires a greater expenditure of labor for a given product. It is therefore open to question whether the future promises any such extraordinary concentration of population as our social prophets would lead us to expect.

In Dr. Howe's view, the modern city offers on the whole better opportunities for satisfactory existence than man has ever before enjoyed. At the same time it entails frightful costs—the slum, the jail, the uncertainty of employment, the merciless elimination of the weak. Corruption of the electorate, incompetence and venality of the public authorities, represent further costs of city life. It is Dr. Howe's chief purpose to point out how the costs may be reduced to a minimum. In order to purify municipal politics, he would have the city own and operate all enterprises which are based upon public franchises. The value of such franchises is so great that bidders for them can afford to pay enormous bribes to secure them for nothing, or for a nominal price. To control the municipal authority either directly or through the politi-

cal organization is an essential point in the policy of public service corporations. Hence the shameful corruption of American cities—a conclusion which, unfortunately, sounds very like a commonplace. In order to improve the condition of the city's poor, Dr. Howe would have the city enter upon an extensive policy of quasi-private enterprises—municipal tenements, lodging houses, crèches, workshops and the like. More than all, he urges measures for the reduction of rents. The tribute to the landowners is, in his opinion, one of the most important causes of the destitution of the working poor. The improvement and cheapening means of transit would in some measure relieve congestion. The author's chief reliance, however, is the single tax, with the stimulus to building that it is alleged would follow from it.

It is unfortunate that Dr. Howe should have devoted so much of his energy to the defense of those parts of the system of Henry George which the progress of economic thought has rendered untenable. Thus on page 269 he argues that common justice, as between different classes of taxpayers, requires the imposition of exceptionally heavy taxes upon land. Two men, A and B, are seeking investment. A decides to invest in land, B in houses. A's land appreciates in value, B's houses depreciate. From this it seems clear to Dr. Howe that A is in a much more favorable position than B and should be taxed accordingly. Of course it is evident that if B possessed ordinary business sense, he made his investment only after calculating that the net returns from houses, after allowing for depreciation, exceeded the net returns, including "unearned increment," to be obtained through investment in land. Possibly he was mistaken; just as possibly A made a mistake in deciding to invest in land. What Dr. Howe fails to see is that the probable increase in the value of land is capitalized in its selling price. It is not possible for a landowner to obtain the ordinary cash return on his investment, plus a constant increase in capital value. Otherwise every one would invest in land. Consequently, it is idle to say that public appropriation of the unearned increment is not confiscation. It may be justifiable and also legal for the state to confiscate such a form of income. But the justification is not to be found in the specially large income from land as a form of investment.

Similarly, the idea that the single tax would stimulate building operations has long since been shown to be untenable. The author assumes that taxes other than those levied on the land will be shifted to the consumer. If that is true, as is generally admitted, the builder as such would gain nothing by remission of taxes on buildings, since such taxes are shifted to the tenant. A stimulus to building would take place

only if the reduction of rents induced more people to live in the city, and this would defeat the purpose of the tax, so far as it is designed to relieve congestion.

In support of his thesis, Dr. Howe cites the fact that large tracts of land are withheld from use in the hope of a rise in land value. A more thorough analysis of the psychology of the real estate dealer would probably diminish the importance attached by such writers as Dr. Howe to the existence of unoccupied land. An owner of real estate does not allow it to lie vacant merely because the unearned increment represents a fair return on his investment. He would greatly prefer to secure in addition the cash rental of the land as a building site. If, however, the land is in such a position that it will be fitted for a high grade building in a few years, the landowner cannot afford to erect a low grade building. Were New York City the owner of the vacant blocks of land along Riverside Drive, it could not afford to lease them at a rental low enough to permit the erection of cheap apartment houses, even though it might be three or four years before any lessee would undertake to erect buildings of a better grade. No doubt there are landowners who hold their land vacant regardless of probable changes in the uses to which it may be put in the future. Many landowners lack capital and enterprise to improve their holdings, and in such cases building might be stimulated by forcing the land upon the market. There is, however, nothing to show that this is a common condition. *A priori* one would argue that a man who cannot afford to build on his land when it would pay to do so will find it to his advantage to sell or lease it.

Dr. Howe's acceptance of the single-tax doctrine with all its crudities is imputable, however, rather to singleness of purpose than to lack of scientific acumen. He demands that the city shall be clean and well policed, that it shall educate its children properly, provide as far as possible for the entertainment and enlightenment of the masses, give work to those who can not otherwise obtain it, reform the criminal and restore the outcast to respectable society. The city must, moreover, adorn itself with magnificent public buildings and relieve the monotony of its solid blocks of houses through a great development of parks. All this would require money—an enormous amount of it. Upon first thought the average citizen would shrink from the burden of taxation involved. The desideratum, for an author with such ambitious projects, is a tax which will fall exclusively upon a limited class of citizens—a class which is not altogether popular with the majority. Dr. Howe naturally seeks an ethical justification for such a tax, and is glad to

accept uncritically the justification invented by Henry George. The majority of his readers, no doubt, will accept it just as readily.

The same singleness of purpose explains other scientific defects in Dr. Howe's exposition. As a rule, only those facts are considered which tend to confirm the author's views; facts pointing in another direction are ignored. For example, Dr. Howe does not even touch upon the difficulties the city would encounter in securing fair contracts for the construction of street railways and other public works, or the complications that would arise in the direct dealings of the city with organized labor. No mention is made of the lamentable failure of municipal ownership of gas-works in Philadelphia, nor is there a hint of the fact that in many American cities the management of water-works is not all that could be desired. Moreover, Dr. Howe is not at all concerned with the constitutional questions involved in his proposed reforms; he apparently thinks that all that is required is to point out a desirable end, leaving to others the task of finding the appropriate means. Except in his brief discussion of municipal trading in Great Britain, he has not been very judicious in his choice of facts; frequently those which he gives are not so telling as others easily accessible. Accordingly the book can hardly take a high place in scientific literature. It can not convince anyone not already inclined to accept its conclusions. But there are many in that position, and to these the author's evident sincerity of purpose, and even his determination to see only one side of the question, will make a strong appeal.

ALVIN S. JOHNSON.

The Aftermath of Slavery. A Study of the Condition and Environment of the American Negro. By WILLIAM A. SINCLAIR. With an introduction by THOMAS WENTWORTH HIGGINSON. Boston, Small, Maynard & Co., 1905.—xiii, 358 pp.

The quality of this book may be appreciated when it is known that the late Edward Atkinson expressed his approval of it, and that Col. T. W. Higginson wrote the introduction; while still more light is thrown upon its general character by the latter's inability to accept some of the extreme positions taken by the author. The volume has but one chapter that justifies the title—chapter viii, on the "Rise and Achievements of the Negro Race," a valuable summary. The other chapters are almost wholly made up of arguments in favor of political and social privileges for the blacks and of assertions of the extreme moral and political depravity of the Southern whites.

A summary of the main theses of the author will be of use to an

understanding of the position of the constantly increasing class of negro agitators: (1) As to slavery, he believes that all the evils of the present "reign of terror and blood" "have their roots in the essential barbarism of the slave system" which was "as black as moral turpitude could make it." (2) The so-called "Black Codes" of 1865-1866 were the "most barbarous series of laws ever written by a civilized people." (3) There was really no such thing as Reconstruction, as it is generally understood—the Radicals treated the South with a "gracious magnanimity and generosity" and "a lasting and incalculable debt of gratitude" is due to the negroes, carpetbaggers and scalawags for the "orderly governments" and other benefits given by them. (4) "While the white vote of the South has been inimical to the great interests of the country, these have been saved by the colored vote," which "was cast strictly in accordance with good sense, the dictates of humanity, the highest welfare of the republic." . . . "The negro vote saved the country from the follies and crimes of free silver, free trade and free riot," and "it is therefore not too much to say that the glory and the power of the republic . . . may be traced to the effective use of the negro as a soldier and as a voter." (5) "Negro domination" is not and has never been possible. (6) The Southern public school system was founded upon and preserved by the negro vote. (7) The Southern whites are determined to bring about practical reenslavement and many thousand negroes have been slain in the "war against negro suffrage." (8) Negro leaders to be honored and emulated were Nash, Smalls, Pinchback, Cardoza, Elliott, Rainey and Ransier—and so on.

To the student of social problems the book is of great value, not as a repository of facts, for the facts in it are badly warped, but simply as a "human document" which illustrates the feelings and attitude of a large class of those educated negroes, living principally in the Northern and Border states, who, in numbers, probably are to Washington and Councill and their kind as 50 to 1, who oppose what is called the "Washington idea", who think that the negro's salvation must be in voting with, traveling with, going to school and the theater and dining with whites, who forget the wishes and needs of the masses of the race. These men are not those who make sacrifices for their race, who make things come to pass as do Washington and Councill, who make up the National Negro Business Men's League. As voicing the sentiments, then, of the class of influential negro radicals the book has a distinct value.

WALTER L. FLEMING.

WEST VIRGINIA UNIVERSITY.

A History of The United States: Vol. I, The Planting of a Nation in The New World. 1000-1660. By EDWARD CHANNING. New York, The Macmillan Company, 1905.—ix, 560 pp.

An eight-volume "history of the United States from the discovery of America to the close of the nineteenth century" is promised, and the first volume has appeared. This is a noteworthy event in any case, of special significance when the author is one who has several times treated the subject in a summary way and has made himself recognized master in certain portions of its immense field by occupation and personal cultivation. No modest task is assumed when the author promises a largeness of view that shall see "one continuous development", which shall have five sides, "political, military, institutional, industrial and social". The omission of "constitutional" is apparently with intention, judging from the first volume. Popular the work is evidently designed and probably destined to be, bringing within the layman's reach the result of many scholars' research, selected and balanced with a high degree of judiciousness. The reader searches in vain for the distinctive unifying principle that shall justify to scholars the retelling of the old story, but he is yet grateful for the performance of the periodically necessary task of bringing the work down to date, reopening the case for a new trial upon each considerable instalment of the new evidence always turning up.

The present volume brings us down to 1660. Five chapters, or over one-fourth of the volume, describe the discovery, isolation and sixteenth-century exploration of the new world. Such a scale of treatment implies an estimate of the significance of that process for the "history of the United States" which is apparently formed in view of custom and the probable interest of the general reader, and the present bulk of first-hand historical material, rather than according to any independently conceived plan for viewing and constructing the history as a unified whole. Moreover, the author's practice of introducing picturesque incidents and amusing but not especially pertinent quotations from the sources, while it enlivens the narrative, does so at the expense sometimes of due proportion, since space is thereby taken from the less interesting but more significant origins of institutions. An important exception is the treatment of the English origin of the town system (pages 421-426), one of the subjects on which Professor Channing speaks with authority.

After the period of discovery European countries other than England are ignored, and a chapter entitled "The Genesis of the United States"

is devoted to an excellent description of the conditions about 1600 which led to England's becoming a colonizing power, to the granting by James I of the charter of 1606, and to the experiments at the James and Kennebec Rivers. 113 pages are devoted to the planting and early history of the Virginia and Maryland colonies, 145 to New England and 47 to New Netherlands. The sixth decade of the century is given a general summary, and the volume concludes with a concise description of the social composition and institutions of the colonies in 1660, accompanied by a valuable colored map, which indicates the extent and location of the population and the diverse elements of which it was composed.

Note may be taken in a summary fashion of the author's conclusions on a few matters of controversy. Captain John Smith is curtly dismissed as "utterly unreliable" (p. 174). The London Company was "turned over" by Smythe to Sandys, and no hint is given of a significant difference between them and their policies (p. 189). There is nothing in the supposed political differences in the company—court party *versus* country party (p. 237). Argal's cause is espoused at the expense of Sandys, whose "unfitness" is "clear" (p. 193). The destruction of the London Company in 1624 is regarded as "beneficial to all concerned" (p. 225). The author holds that seventeenth century Puritanism was "largely social in its character," and that Gardiner so "studiously avoids social and economic factors that some of his readers find it difficult to discover why there should have been any Puritan movement at all" (p. 292). Winthrop "had no connection with the formation of the Massachusetts Bay Company, unless reliance can be placed on his statement that 'with great difficulty we got . . . abscinded' certain requirements in the form of the Massachusetts charter" (p. 325). The requirement of the residence of the Massachusetts Bay Company in England was omitted from the charter "through inadvertence" (p. 346). Charles I, Buckingham and Laud were all "sincere" men, but the career of the latter is "a striking example of the ill effects which are sometimes produced by intrusting the management of affairs to a 'scholar in politics'" (p. 288). For Laud, Cromwell and Winthrop toleration was a thing having "nothing to do with the problems which they were seeking to settle" (p. 323). Mrs. Hutchinson and Roger Williams are given spirited characterizations, but as episodes of Massachusetts, not Rhode Island, history; for the development of New England is treated only in its main currents. That very interesting eddy, the New England Council, though it caused much concern at various times to the New England leaders, is practi-

cally ignored. One and one-half pages are given to the Council, and less than one page to the little non-Puritan plantations at the mouths of the Piscataqua and the Saco.

As is perhaps inevitable in a work of so large proportions, Professor Channing appears to have built his structure on a foundation laid almost entirely by other scholars. The foot-notes and bibliographical paragraphs at the chapter-ends reveal his familiarity with an enormous amount of historical literature, general and special, but the use of the sources seems to have been such as would be dictated by his writing to the general reader, *i. e.* by way of corroboration and illustration, rather than to the scholar, by way of direct appeal for what the sources contain. He distinctly disclaims the intention of making a systematic bibliography, preferring to be a "reader's guide." This service is admirably performed. The notes make discriminating comment on practically all the available literature, and serve as a sufficient guide to one desiring to read on special topics around and beyond the author. Furthermore, the numerous citations of records and printed archives make it feasible to check him up on details. Considering this, it would perhaps be ungrateful to look for more and to regret that there is no indication here of exploitation of the vast stores of unpublished material in the various state and local record depositories in America and England. Is it asking too much of the author that, when he treats the later seventeenth century and that *terra incognita*, the early eighteenth century, he forsake the beaten track and blaze the new path so much needed? If he would describe the English attempts in that period to systematize and conserve the commercial interests of their growing empire, and the simultaneous American struggle to win constitutions of self-government within that empire, and if he would found that description on a study of materials mostly still in manuscript—that would be an arduous task, but highly honorable, and such as to win him in increasing degree the gratitude of scholar and general reader alike.

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England under the Tudors. By ARTHUR D. INNES. London, Methuen, New York, Putnam, 1905.—481 pp.

The History of England from the Accession of George III to the Close of Pitt's First Administration (1760-1801). By WILLIAM HUNT. London and New York, Longmans, 1905.—495 pp.

The volumes under review occupy places in rival series of coöperative

histories of England which are now in course of publication. In one of the series it is the intention to outline the history of the nation to 1815 in six volumes, while the other will include twelve volumes and will extend nearly to the present time. It is expressly stated by the editors in each case that the volumes have been prepared in response to a demand for a treatment of the entire field of English history in works of convenient size which shall incorporate the best results of contemporary scholarship. The purpose has been to produce works which shall occupy an intermediate position between the manual or text-book and the elaborate monograph or history of a limited period. In the light of this statement the volumes should be judged. Original contributions to the history of the periods treated are not to be expected, but rather a clear presentation of the main aspects of the national life at the time, in such fashion as to show the development of the whole. An extended use of original sources is not presupposed, though both authors give ample evidence of preparation of this kind; but rather a judicious use of the results at which others have arrived.

Mr. Innes has produced a decidedly spirited and well-balanced account of the period of the Tudors. In his pages appear traces of the influence of Busch, Gairdner, Brewer, Gasquet, Creighton, Lang, Pollard, Hume, Corbett, Seeley, while much of the substratum has come from Froude. Good evidence of his sanity is afforded by the use which he has made of the last-named writer. His errors both in judgment and in statement of fact are recognized, but at the same time and especially for the second half of the century, Froude's work is accepted as fundamental. Mr. Innes has been especially successful in showing the organic relation between foreign policy and the internal development of the kingdom, and in this connection his appreciation of Wolsey is clear and just. The sinister aspects of Cromwell's career are brought into proper relief, but it is shown that his discernment was clearer than the king's when he affirmed that a league with the Lutherans was the logical consequence of the breach with Rome. While the dominance of Henry's will, even over his greatest ministers, is recognized, the subordination of the church to the state and the spoliation of the monasteries are regarded as his work jointly with Cromwell. The separation from Rome is treated as an accident, which did not involve, except as a very remote consequence, the establishment of the right of private judgment.

If Mr. Innes holds a brief for any one, it may be said to be Cranmer. Earlier studies had turned his attention in that direction, and in this volume he repeatedly seeks to rescue the name of that prelate from the

charge of moral cowardice with which it is too often associated. He was the student forced to take a prominent share in public affairs, a man of peace who was dragged into the front of the battle. To him, perhaps by virtue of this peculiar inconsistency, is chiefly attributed the fact that "the Church of England allows a larger latitude of opinion within her borders than any other."

To Mr. Innes the personal character of Elizabeth presents a well-nigh insoluble problem. He halts between the two opinions: that she had throughout a profound and reasoned policy, though it was concealed by an appearance of capriciousness and deceit, and the view which would make recklessness and caprice the essential elements in her character and find in good luck the explanation of her success. But though his reflections indicate doubt on this point, his treatment of the reign as a whole brings the fact into clear relief that personal, local and special interests were subordinated with unusual care to reasons of state. But this is to be explained in part by the influence of her councilors, in reference to whom the great merit of Elizabeth was that she selected wisely and kept the best men in office till they were literally worn out in her service. The contrast which is drawn between the persecutions of Elizabeth and those of her predecessor is a suggestive point in this connection. In this period, again, skill is shown in the treatment of foreign relations, in reference to which attention may be especially called to the manner in which the courtships of Elizabeth are treated.

The period to which Mr. Hunt has addressed himself involves more complicated and far-reaching relations than that of the Tudors. When George III came to the throne England had become a great world power. Relations not only in Ireland, but in the Orient and in America, had come to be of great importance. Parliament had risen to be the chief organ in the constitution. Political parties were fully organized, and some signs of the later democratic awakening were beginning to show themselves. The state system of Europe was passing through changes, both in the east and the west, which were of the greatest moment. Mr. Hunt passes in review the events of this period of forty years, on all the theaters of action, and seeks to indicate the relation in which England stood to them all. So far as possible in his narrative he follows the order of time. On every page appears abundant evidence that he has diligently used the standard authorities. The influence of Lecky, May, Mahan and of the best biographies for the period are clearly traceable. The reading of the author among the memoirs of the time and among the more original sources in print has also been wide. The literature in French and German has been utilized.

For the early years of the reign some material has been drawn from the Newcastle papers and the Pitt papers, which are still in manuscript.

The style is condensed, but clear. The pages are packed with information, which in general is well arranged and digested. In all essential respects the book fulfils its purpose, that of a compendium of existing knowledge prepared for the use of advanced students and readers.

For this very reason, however, the book lacks individuality. The author writes neither as a Whig nor as a Tory. If he cherishes enthusiasms or is moved by antipathies, he has little or no space in which to parade them. Great personalities and striking events lose some of their prominence and sink into the general mass. The book was not written with any special purpose, like that of exploiting new material or presenting an original view of a period or of facts already well known. It lacks a certain spice of originality which is perceptible in Mr. Innes's volume. But the reader who desires to review the main facts of the first half of the reign of George III will find them better presented, and in more orderly fashion, in this volume than in any other with which the writer is acquainted.

As the events of this period were located in four distinct theaters—England, Ireland, America, India—while two wars occurred during the interval, in which several of the states of the continent of Europe were concerned, the question of arrangement involves some difficulty. Mr. Hunt has in general adhered to the chronological order of events, and in some parts of the book this has been done so strictly as almost to destroy the continuity of treatment. For example, the history of the British in India during the period is so cut up and distributed through the book as to make it difficult to get a clear idea of its significance. The same, though to a less degree, is true of Ireland.

The treatment of the colonial revolt is, on the whole, judicious and satisfactory. It is called first a "quarrel" and then a "rebellion," with which latter designation some of Mr. Hunt's readers would not agree. That Parliament had frequently imposed port duties on the colonies is hardly true (p. 62), only three such instances having occurred before 1765. Jonathan Mayhew is credited without qualification to the Unitarians (p. 61). An occasional error in geography appears, as when it is stated that after the seizure of Ticonderoga in 1775 Arnold sailed "up Lake Champlain and captured St. Johns" (p. 144), and also when it is stated (p. 167) that after the engagement at White Plains, Washington withdrew to a position "behind Croton river." On p. 194 d'Estaing is represented as sailing "southwards" from New York in order to reach Newport. I doubt also whether loyalists always rode astride "iron" rails.

One of the few instances where the undercurrent of the author's feeling is revealed is on page 71. There he speaks of Camden's argument on the repeal of the stamp act as "trash," "more in place in the mouth of an American demagogue than of an English judge." The author is especially severe on Camden, while Conway and Dartmouth are dismissed with little credit. The Adamses, Patrick Henry and men of their class figure very slightly in these pages. The book in general deals with external political events, and little inquiry is made into deeper natural and social causes.

HERBERT L. OSGOOD.

RECORD OF POLITICAL EVENTS.

[From November 7, 1905, to May 1, 1906.]

I. INTERNATIONAL RELATIONS.

THE CONFERENCE AT ALGECIRAS.—The central event in the diplomatic world has been the international conference over the Morocco question. (See last RECORD, p. 744.) The conference met at Algeciras, Spain, on January 16. Besides Morocco, twelve states, including France, Germany, England, Austria, Italy, Spain and the United States were represented; but the American delegates, Henry White, ambassador to Italy, and S. R. Gummere, minister to Morocco, while participating in the discussion, abstained from voting. The meetings were presided over by the Duke of Almodovar, Spanish minister of foreign affairs. The matters which aroused the greatest controversy were the policing of the port towns and the control of the state bank which it was proposed to establish. France, having supplied about 70,000,000 of the 75,000,000 francs lent the Maghzen by foreign financiers, considered herself entitled to a predominant influence in the bank administration; whereas Germany demanded that the new institution should not be controlled by one nationality and should not be used for political purposes. In the police question the main problem was whether France, which by her position in Algeria was most interested in such work and was best situated for it, should control the police, or whether they should be jointly controlled by several nations. The differences of opinion regarding these subjects were so radical that for several weeks no agreement was reached; all sorts of rumors spread abroad, and both Germany and France made preparations for war. Great Britain supported France with firmness, while Russia, Spain and even Italy, despite the Triple Alliance, were also disposed to take the side of France. Under these circumstances Germany was constrained to act with the greatest caution, and at the end of March a compromise was reached. By the terms of this compromise it was agreed that for five years France shall officer the police of the four ports of Saffi, Mazagan, Mogador and Rabat; that Spain shall officer the police of the two ports of Tetuan and Laroche; that France and Spain together shall furnish the officers for Tangier and Casablanca, subject to an inspector of police from a third power; and that the police officers shall be responsible both to the sultan and to the diplomatic corps. As regards the bank question, it was settled that France is to have three of the fifteen shares, while the other countries are to have one each, and that the Banks of England, France, Germany and Spain shall appoint one supervisor each. In addition, steps were taken to prevent the intro-

duction of contraband of war into the country, and the principle of the open door for the trade of all nations was adopted. While the outcome was a compromise, it is generally conceded that France came away from the conference with enhanced prestige, whereas that of Germany was considerably diminished.

EUROPEAN INTERNATIONAL RELATIONS.—On November 17 the representatives of six powers presented final demands to the Turkish government for an international board of control for the financial affairs of Macedonia. The Porte rejected the proposals on all points, declaring that Turkish public opinion would not countenance such a measure. An international fleet was therefore dispatched, which arrived off Mytilene on the night of November 25, and after the expiry of three hours' notice given to the local authorities a force was landed which occupied the custom-house, the telegraph office and other portions of the town. Lemnos was soon afterward occupied in the same manner. These aggressive measures brought the sultan to terms, and about the middle of December the demands of the powers, in slightly modified form, were accepted.—Edward Joris, the Belgian accused of attempting to assassinate the sultan last July (see last RECORD, p. 774), was convicted on December 18, together with three accomplices, by the court of Stamboul, and was condemned to death. The Belgian minister refused to recognize the validity of the sentence on the ground that an Ottoman court has no right to try a Belgian; and he demanded that Joris be handed over to a Belgian court, but the sultan has thus far refused to assent to the demand.—Diplomatic relations have been arranged between the new kingdom of Norway and other powers.—The concordat between France and the Papacy was abolished by the passage on December 6 of the law separating church and state (see FRANCE). In February it was reported that the pope had issued an encyclical condemning the law because it is repugnant to the divine constitution of the church, because by it worship is entrusted to lay associations and because the freedom of the church is submitted to the will of public officers. A few days later he created nineteen French bishops in the dioceses made vacant by the struggle.—Commercial treaties have been signed between Austria and Italy, Austria and Belgium, Austria and Russia, Portugal and Italy, Portugal and Switzerland, Portugal and Germany, Great Britain and Bulgaria, Servia and Germany. In November a new *modus vivendi* for commerce and navigation, to take the place of that arranged in 1892, was reached between representatives of Italy and of Spain; but the Italian chamber, partly out of hostility to the ministry and partly because the arrangement made no reservations in favor of Italian wines, refused to ratify it.—In January representatives of Servia and Bulgaria negotiated a convention aiming at the establishment of a customs union between the two countries; but the convention aroused much opposition on the part of Austria-Hungary, and the adoption by the last mentioned country of a hostile attitude toward the pro-

ducts of Servia forced the Servian government to refrain from submitting the convention to the Skupshtina for ratification.

ASIATIC INTERNATIONAL RELATIONS.—On February 12 the British ambassador called upon the grand vizier of Turkey in order to insist upon the withdrawal of the Turkish troops which had occupied Tabah and other places in the Sinai peninsula on the Egyptian side of the frontier. Turkish commissioners later visited Cairo in connection with the matter, but for some reason failed to give any official intimation of their presence, and later returned to Turkish soil. Despite the protests of the English government the troops have not yet been withdrawn.—A border dispute has also occurred between Turkey and Persia. In March, after considerable previous negotiation, the Persian ambassador at Constantinople, in replying to a note from the Porte, deprecated any break in the good relations between two Mussulman powers and stated that Persia intended to send delegates to negotiate as soon as the Turkish troops were withdrawn from territory incontestably belonging to Persia.—Early in December a new agreement, which is to hold for five years, was reached by Germany and China regarding the Tsing-Tau customs. It was stipulated that the customs should be administered in a similar fashion to those in treaty ports, subject to such modifications as local needs may require. China is to pay Germany twenty per cent of the imposts as a contribution toward the expenses of local administration. German troops stationed at Ching-wan-tao and Pei-taho, outposts of Kiao-chau, were withdrawn early in March.—On December 22 a treaty by which China in effect confirmed the Peace of Portsmouth was signed at Peking between the Japanese representatives, Baron Komura and Mr. Uchida, and the Chinese representatives, Prince Ching and Yuan Shih-kai. By the treaty China consented to lease the Liao-tung peninsula to Japan and conceded to her also the control of the railway on the peninsula as far as Chang-chun, and the right to build a railway from Antung on the Yalu to Mukden, with a reservation to China of the right to purchase at the end of a certain period. By another article it was agreed that sixteen of the principal ports and cities of Manchuria should be thrown open to the commerce and trade of the world. On April 9 the Japanese embassy at Washington announced that, in accordance with the principle of the open door, citizens and vessels of foreign countries should from May 1 be allowed to enter An-Tung-Hsien and Ta-Tung-Kao; that on the same date consuls would be received at An-Tung-Hsien, and that consuls might enter Mukden on June 1. Travelling in Manchuria is to be permitted as far as military exigencies will allow. The port of Dalny is to be opened as soon as possible.—During January and subsequently efforts were made by Russia to secure favorable concessions from China in Mongolia, Turkestan and Manchuria, but seemingly without much success.—An agreement between Great Britain and China, embodying the adhesion of China to the Tibetan Convention, was signed at Peking on April 27.

—Since the murder on October 24 of American missionaries at Lienchow (see last RECORD, p. 743) numerous other anti-foreign demonstrations have occurred in China. Serious riots, which were in part a result of a dispute between the Chinese and foreign members of the "mixed court," broke out at Shanghai on December 18, but were suppressed by the help of marines landed from warships in the harbor. Six Jesuit priests and four English missionaries were killed at Nanchang on February 28. Particular hostility has been displayed toward Americans; and the boycott against American goods (see last RECORD, p. 743) has resulted in serious injury to American trade (see THE UNITED STATES, THE ADMINISTRATION, *infra*). The general situation in the empire was such that not a little apprehension of a repetition of the Boxer troubles was aroused. As a precautionary measure the American forces in the Philippines were strengthened, and additional ships were sent to Chinese ports. It is probable that representations were made to the government at Peking by Japan and perhaps by other nations.—In November the government of Japan announced that all ships and cargoes seized by the Japanese after September 5 would be released. About the same time the Japanese legations at London, Washington, Paris, Berlin and St. Petersburg were raised to the rank of embassies. A statement made on January 31 in the Japanese Chamber by the minister of war was later construed into an intention on the part of Japan to insist that Great Britain should take steps to render her army more efficient and was the occasion of considerable comment.

AMERICAN INTERNATIONAL RELATIONS.—The fact that the commercial agreement between the United States and Germany was to expire March 1, thus rendering American imports into Germany subject to the general rates of duties, instead of the conventional rates enjoyed by those countries which had effected reciprocity arrangements with Germany, aroused considerable apprehension lest a tariff war should break out between Germany and the United States. In February it was agreed that until June 30, 1907, the United States should be allowed to enjoy most-favored-nation treatment. The hope was expressed by Germany that before the expiration of that period a regular treaty could be concluded.—The treaty between the United States and Santo Domingo whereby the United States is to manage the customs administration of the latter has been strenuously opposed in the United States Senate. Several Republicans have refused to support it; while the Democrats have in caucus voted to oppose it, although one Democratic senator, Mr. Patterson, has announced that he will not abide by the caucus rule. A vote upon the treaty has not yet been taken. Subsequently to the negotiations of the treaty President Morales late in December fled from the capital and Vice-President Caceres was installed in his place (see LATIN AMERICA). The new president has, however, declared himself in favor of the treaty.—Peculiar complications arose in November out of an attempt of Americans resident on the Isle of Pines to ignore Cuban authority, to set up a territorial government and to

send a delegate to Congress. Appeals were made to President Roosevelt, but he declined to consider the Isle of Pines as other than Cuban territory. Popular opinion in the United States has generally regarded the attempt in the light of a joke. The treaty under which the United States relinquishes all claims to the island has not, however, yet been ratified by the United States Senate, although it has been pending since 1903. It is proposed by some senators to amend the treaty in such a way as to secure local self-government for the people of the island.—A new commercial treaty which has not yet been ratified by the Senate has been negotiated with Cuba. The treaty provides for reduced duties upon many imports from the United States.—A protocol settling the boundary dispute between Brazil and Venezuela was signed at Caracas on December 9. In the same month indiscreet and unwarranted activity on the part of the officers of the German cruiser "Panther" in seeking a deserter at the port of Itajahy led Brazil to lodge a protest with Germany, with the result that the action was disavowed and an apology was made.—The third Pan-American Conference is to meet at Rio Janeiro on July 21. The American representatives are W. J. Buchanan, chairman, J. S. Harlan, Dr. L. S. Rowe, V. L. Polk, and G. Larrinago of Porto Rico. Secretary of State Root will visit the conference. It is understood that, among other matters, the subject of the Calvo doctrine as to the collection of contractual indebtedness by the use of military force will be discussed.—As usual President Castro of Venezuela has managed to keep his country involved in trouble with other powers. Early in December diplomatic relations with Colombia, which had been broken off since the Matos revolt, were resumed; but a fortnight later, owing, it is said, to the failure on the part of Colombia to return to Venezuela a political refugee who had fled thither, Castro recalled the Venezuelan consul at Cucuta and closed the consulate at Bogota. After futile negotiations regarding the affairs of the French Cable Company (see last RECORD, p. 746) a diplomatic break took place between France and Venezuela on January 10. On January 14 M. Taigny, the French chargé d'affaires, went on board the steamer "Martinique" at La Guayra in order to get instructions which, owing to the seizure of the cable office, were sent in charge of a French postal agent. When he attempted to go ashore, he was prevented by force from doing so. The Venezuelan chargé at Paris was thereupon given his passports. Rumors of a French punitive expedition have been frequent, and it is reported that the United States has informed France that she would not interpose objections to such a step. The claims of the American asphalt companies remain unsettled.

THE HAGUE CONFERENCE AND INTERNATIONAL ARBITRATION.—On April 3 the Russian government presented proposals to the United States for reconvening the Hague Conference in July. On the 13th, however, Secretary Root informed the Russian government that the convenience of the United States would be served by the selection of any

date later than September 20. A date has not yet been agreed upon.—**Arbitration treaties** have been negotiated between Denmark and Spain, Denmark and Italy, Brazil and the Argentine Republic.

II. THE UNITED STATES.

THE ADMINISTRATION.—The past winter witnessed a bitter struggle between the president and his opponents in Congress. The first important trial of strength occurred in the House over the Philippine tariff and joint-statehood bills; but the main struggle was over the bill for the regulation of railway rates. This measure, which passed the House by an almost unanimous vote, was still before the Senate at the close of the period under review. In this body the Republicans were divided over the question, and the most outspoken opponents of the proposed legislation were certain Republican senators. In order to weaken the president's influence with the people and thereby defeat his policies, all possible opportunities of attack were seized upon with eagerness. His Santo Domingo treaty was criticised, the management of the Panama canal was made a subject of inquiry, and he was accused of trying to influence members of Congress by his use of patronage. The president, on his part, is reported to have asserted that bribery was being used by interests opposed to the statehood bill. A remarkable feature of the contest was the attitude taken by the Democrats. On many matters, such as the statehood bill and the Santo Domingo treaty, they opposed the administration; but on others, and particularly on the railway rate bill, they gave him an almost unanimous support.—In order to do away with unnecessary printing in the departments and improve the form of the annual reports and other documents, the president in January ordered the head of each department to appoint an advisory printing committee and announced that he intended to appoint a general committee, advisory to all the departments, to consist of the librarian of Congress, the public printer and three other persons.—The postmaster general has begun a war on fraudulent medical concerns. On March 24 an order was issued excluding from the mails the advertisements of 52 such establishments in New York city and refusing delivery of mail matter addressed to them.—Mr. Metcalf, secretary of commerce and labor, in February approved the report of a special commission which had been investigating the existing regulations regarding the entry and residence of Chinese. The report provided that such alterations shall be made that there shall be no delay in the admission of those Chinese who do not belong to the excluded classes, that the Bertillon system of identification shall be discontinued and that Chinese departing from this country shall be informed of the conditions of their readmission.—During the fall and winter there was frequently great stringency in the money market, particularly in speculative circles, and efforts were made to induce the treasury department to come to the relief of the market. This Secretary Shaw resolutely refused to do; but on March 2, in view of the unusual amount of money flowing into the treasury, he

announced that he would at once deposit \$10,000,000 of the public funds in existing depository banks upon their agreement to import an equal amount of bullion from abroad.—Among the appointments which have been made are the following : Wilfred B. Hoggatt to be governor of Alaska ; H. J. Hagerman to be governor of New Mexico ; Henry C. Ide to be governor of the Philippines ; John L. Pancoast to be associate justice of the supreme court of Oklahoma ; Hosea Townsend, William H. H. Clayton, William R. Lawrence, Lurman F. Parker, to be judges of the Indian Territory ; Brigadier General Frederick D. Grant to be a major general ; Major General J. C. Bates to be lieutenant general succeeding Lieutenant General Chaffee ; Brigadier General Franklin Bell to succeed General Bates on his retirement on April 14 ; Captain Henry W. Lyon to be a rear admiral ; John H. Edwards to be assistant secretary of the treasury ; Luke E. Wright, ex-governor of the Philippines, to be our first ambassador to Japan ; Edwin V. Morgan, ex-minister to Corea, to succeed Herbert G. Squiers as minister to Cuba. In March the president summarily removed Mr. Bellamy Storer from his position as minister to Austria and appointed Charles S. Francis, ex-minister to Greece, to succeed him. Early in December the president removed William S. Leib, assistant United States treasurer at Philadelphia, because of "constant and persistent violation of the civil service law." In the same month he removed Irving W. Baxter, a United States district attorney in Nebraska, for having recommended that two convicted land thieves should merely be committed to the custody of the marshall for a few hours. On March 6 he accepted the resignation of assistant paymaster George A. Deering, who had been brought before a court-martial on charges concerning his pay accounts.—On November 25 Senator Burton of Kansas was again convicted of having received compensation for practicing as an attorney before the post office department in behalf of a speculative concern that was in danger of being forbidden to use the mails for the promotion of its business (see RECORDS for December 1904, p. 727 and December, 1905, p. 750). His case has again been appealed. George W. Beavers, one of the persons implicated in the postal frauds (see RECORDS of December 1903, p. 726 ; June, 1904, p. 341 ; December, 1904, p. 730 and December 1905, p. 750) was sentenced in February to four years in the penitentiary. Benjamin J. Greene and John F. Gaynor, who some years ago fled to Canada but were later extradited (see last RECORD, p. 748), were found guilty in the federal court at Savannah on April 12 of embezzlement and conspiracy to defraud the government and were sentenced to four years imprisonment and to pay a heavy fine.

THE DEPENDENCIES.—On January 31 Major-General Wood, head of the military department in Mindanao, succeeded Major-General Henry C. Corbin as commander of the military division of the Philippines. Early in March General Wood attacked several hundred Moro outlaws who had taken refuge in the crater of Mount Dajo, Island of Jolo, and on a final

assault made on the 8th a desperate fight ensued in which about six hundred Moros and seventeen Americans were killed. When the news of this conflict reached the United States, the fact that many Moro women and children were killed aroused much criticism. It was later explained that this was rendered unavoidable because the women fought along with the men and the children were used by the men as shields. Later in the same month a constabulary force was treacherously attacked by Pulajanes at Magtaon, Island of Samar, but after losing sixteen in killed and wounded succeeded in putting the enemy to flight. On April 16 a band of forty ladrones raided the town of Malolos near Manila, killed three members of the constabulary, lost one of their own number and escaped with twenty rifles.—The annual report for 1904-05 of the Philippine commission states that the exports have increased by \$2,129,738, but that there was a decrease in imports of \$2,342,203, due to the fact that a good rice crop had rendered unnecessary a large importation of rice. The failure of the Senate at Washington to pass the Philippine tariff bill has proved a great disappointment to the people of the islands.—On April 2 Henry C. Ide was inaugurated as governor general of the Philippines in place of Governor Wright, who goes as ambassador to Japan. He will be succeeded later in the year by General James T. Smith.—On March 26 the House of Representatives in the contested election case of *C. P. Tanker v. Jorab K. Kalemiorcole* decided that the latter had been rightfully elected delegate for Hawaii.

PANAMA AND THE Isthmian CANAL—An emergency appropriation of \$11,000,000 for use in canal work was signed by the president on December 21.—On January 8 the president sent to Congress the letter of Secretary Taft transmitting the annual report of the Isthmian Canal Commission, and in doing so stated that great progress had been made, especially during the last nine months, and that the canal would probably be finished in a shorter time than estimated. He also, said that many charges had been made and doubtless would continue to be made by "sensation mongers" or by persons with a grievance against the canal management, and he advised Congress not to pay any heed to such charges. Nevertheless, the Senate passed a resolution for an inquiry. This inquiry developed the fact that many of the charges made in the American press against the canal management had been founded on hearsay evidence.—In their written report a majority of the board of consulting engineers recommended a sea-level canal; but the president, Engineer Stevens, and all the canal commissioners except one have declared for a lock canal. Some of the advantages of a lock canal are that it can be built in eight or nine years at an estimated cost of \$147,000,000, whereas a sea-level canal would probably require at least fifteen years and would cost not less than \$250,000,000.—The labor question still continues to be a puzzling one. An attempt in Congress to insert in an appropriation bill a clause providing for an eight-hour day for laborers on the canal was defeated.

CONGRESS.—The Fifty-ninth Congress assembled for the first time on December 4. Joseph G. Cannon was re-elected speaker of the House. The president's annual message, one of the longest ever submitted to a Congress, was read on the 5th. In it the first place was given to an urgent plea for better government regulation of railroads and particularly for legislation to destroy the rebate evil. Among the other recommendations were legislation to require the publication of campaign expenses and to prohibit campaign contributions by corporations; federal supervision of insurance; maintenance of the efficiency of the navy; prohibition of interstate commerce in adulterated food; more stringent regulation of immigration; the admission of Porto Ricans to American citizenship; admission to Congress of a delegate from Alaska; joint-statehood for Oklahoma and Indian Territory and for Arizona and New Mexico; reduction of the tariff on Philippine products; an emergency appropriation for the Panama canal commission and improvement of the consular service.—A bill admitting all Philippine products into the United States free, excepting rice, sugar and tobacco, which were to pay 25 per cent of the Dingley rates until 1909, when they also were to go on the free list, was passed by the House on January 16, despite opposition on the part of many Republicans; but the Senate committee on the Philippines refused to report it. On April 3 Senator Lodge announced that he would nevertheless try to get the bill before the Senate.—A joint-statehood bill for New Mexico and Arizona and for Oklahoma and Indian Territory was early introduced in the House. In Arizona the measure aroused much opposition. In the House there was an "insurrection" against it on the part of certain Republicans. The bill was, however, carried through on January 24 by a vote of 192 to 165, but in the Senate that portion of it which provided for the admission of Arizona and New Mexico was stricken out.—After the passage by the House of the Philippine tariff and joint-statehood bills Chairman Hepburn, of the House Committee on Interstate and Foreign Commerce, reported a railroad-rate bill. This bill, which contained many features of the Esch-Townsend measure of the preceding session, placed all interstate commerce within the control of the Interstate Commerce Commission, and provided that whenever the commission, after a full hearing upon a complaint against any existing railroad rate charged or collected by a carrier engaged in interstate commerce, should be of the opinion that the charges or rates complained of were "unjust or unreasonable, or unduly preferential or prejudicial, in violation of the terms of this act," the commission should have the power "to determine and prescribe what will in its judgment be the just, reasonable and fairly remunerative rate to be thereafter observed as the maximum rate to be charged;" and to make an order that the carrier should desist from levying any charge in excess of the prescribed maximum. The bill was supported by both parties in the House and was passed by that body on February 3 by a vote of 346 to 7. When the bill was considered in the Senate Interstate Commerce Committee, a

majority on February 23 voted to report it unamended; but Senator Aldrich, the leader of the opposition to it, in order to bring it into discredit, moved that it should be put in charge of Senator Tilman, a Democrat and one of the president's bitterest enemies. The motion was carried. A hard fight then began in the Senate and a final vote has not yet been taken.—Among the other bills which passed the House was one appropriating \$11,000,000 for the Panama canal work, and another making it a misdemeanor to manufacture or sell adulterated or misbranded foods, drugs, medicines or liquors in the District of Columbia, the territories or the insular possessions, and prohibiting the shipping of such goods from state to state or to a foreign country. An army appropriation bill carrying a little more than \$69,000,000 was passed by the House on March 1. A national quarantine bill giving to the secretary of the treasury control over all quarantine stations, grounds and anchorages and providing that all common carriers must receive passengers, baggage and freight which shall have been discharged and certified by the public health and marine hospital service and forbidding interference with the same, passed the House on April 3.—Other measures which have been introduced include a bill to improve the consular service, a bill to provide residences for our ministers and ambassadors, an anti-injunction bill and a federal insurance bill.

THE FEDERAL JUDICIARY.—The supreme court unanimously decided that the case of Caleb Powers is not removable from the state courts of Kentucky to the federal courts.—In the case of *Haddock v. Haddock* the court sustained the courts of the state of New York in holding that a divorce valid in all the states cannot be given by the courts of a state in which only one party resides.—On March 12 the court decided the Chicago Street Railway cases, involving the franchises of the three principal street railway companies, in favor of the city. The decision sustained the acts of the state legislature extending the life of the charters of the railway companies to ninety-nine years but did not sustain the contention of the companies that the contract rights (limited to a less term of years than the charter life of the companies) are extended. Contracts or ordinances of the city limiting the use of the streets by the companies for twenty-five years from 1859 were upheld and the companies' rights in the streets were held to expire in accordance with the express terms of the ordinances or contracts.—In *Martin v. Texas* it was held that while an accused person of African descent on trial in a state court is entitled under the constitution of the United States to demand that in organizing the grand jury and empanelling the petit jury, there shall be no exclusion of his race on account of race or color, such discrimination cannot be established by merely proving that no one of his race was on either of the juries. Motions to quash based on alleged discriminations of that nature must be supported by evidence or by an actual offer of proof in regard thereto.—In *South Carolina v. the United States* it was held that persons who sell liquor are not re-

lieved from liability for the internal revenue tax imposed by the federal government by the fact that they have no interest in the profits of the business and are simply the agents of a state which, in the exercise of its reserved power, has taken charge of the business of selling intoxicating liquor.—In *Campbell v. California* the court held that a state tax on inheritances to brothers and sisters but not on inheritances to brothers-in-law and sisters-in-law does not violate the fourteenth amendment.—In the case of the Hibernia Savings and Loan Society *v. San Francisco* the court upheld the principle that while the states cannot tax official agencies of the federal government this rule does not apply to obligations such as checks and warrants available for immediate use.—In *New York, New Haven and Hartford Railroad v. the Interstate Commerce Commission* and the *Interstate Commerce Commission v. the Chesapeake and Ohio Railroad Company* the court held that no railroad can give preference in rates to itself as a dealer in commodities. The court recommended that the injunction of the lower court "be modified and enlarged by perpetually enjoining the Chesapeake and Ohio from taking less than the rates fixed in its published tariff of freight rates by means of dealing in the purchase and sale of coal."—That there is no law governing the character of printed matter which a Congressman may authorize to be sent through the mails under his official frank is the gist of a decision rendered in April by Judge Marshall of the United States district court in Utah. (See also the TRUST PROBLEM, *infra*).

STATE AFFAIRS.—In Connecticut a law has been passed by the present legislature requiring retail dealers in patent medicines which contain a certain percentage of alcohol to pay a license fee of \$25.—On April 18 the state of California was visited by an earthquake which destroyed a great part of the city of San Francisco and of several other towns and killed several hundred people. In San Francisco the earthquake was followed by a fire which raged for several days. The total loss in the one city is estimated at \$300,000,000, and probably 200,000 people were rendered homeless. Prompt assistance was rendered by individuals, associations and by the national government.—The suit of the state of Kansas against the Standard Oil Company of Indiana for forfeiture of its certificate to carry on business in the state was dismissed by the state supreme court on March 5.—In the course of proceedings brought by Missouri against various oil companies for violation of the anti-trust laws, the state attorney general, after a long fight, was able late in March to compel Mr. Henry H. Rogers, the active head of the Standard Oil Company, to admit that the Standard controls the Waters-Pierce Company, the Republic Oil Company and the Standard Oil Company of Indiana. On March 5 the Missouri board of railroad and warehouse commissioners reduced the rates on oil shipped between St. Louis and Kansas City in such a way as to strike a blow against the Standard Oil Company in favor of independent refiners.—In February the case of the state of Missouri against the state of Illinois regarding the right

of the city of Chicago to turn sewage into the Chicago drainage canal was decided by the United States supreme court in favor of the defendant.—In **Montana** the supreme court in November declared an anti-trust law unconstitutional because it made exceptions in favor of agricultural and horticultural classes.—In **New Jersey** Governor Stokes on March 26 signed a bill limiting all public utility franchises granted by municipalities to a term of twenty years, unless such franchise should be ratified by the people, in which case the term may extend to forty years.—The first step toward deposing Benjamin F. Odell from the Republican leadership in **New York** politics was taken when his opponents, with the aid of President Roosevelt and Governor Higgins, secured on January 3 the election of James W. Wadsworth, Jr., as speaker of the Assembly. A resolution calling upon Chauncey M. Depew to resign his seat in the federal Senate because of his complicity in insurance irregularities was introduced in the state Senate. The Elsberg Rapid Transit bill, which has been before the legislature at every session for four years, passed both houses in April. Revelations of wrong doing by the heads of the great insurance companies have continued (see last RECORD, p. 755). On February 22 the Armstrong investigating committee sent in its report to the legislature. The report recommended legislation prohibiting syndicate operations on the part of insurance officials, the limiting of new insurance by any company to \$150,000,000 per year, added restrictions upon the nature of investments, annual distribution of surplus to be applied to the reduction of premiums, prohibition of political contributions and similar measures. Several bills in line with these recommendations have already been passed; one of these bills forbids corporations to make contributions to a political party. There have been many changes in the management of some of the companies, and in some cases the officials have made partial restitution. George W. Perkins of the New York Life, Frederick A. Burnham of the Mutual Reserve Life and others have been arrested on charges of larceny.—A special session of the **Pennsylvania** legislature has passed a number of excellent acts including a repeal of certain "ripper" legislation, a corrupt practices act, a personal registration act and a civil service act for Philadelphia.—The **Ohio** legislature in March passed a bill fixing a penalty not to exceed \$200 or six months in jail, or both, for students guilty of hazing or teachers or superintendents of schools permitting hazing. The same legislature also enacted a law fixing a passenger rate of two cents per mile on all railroads.—The **Rhode Island** Senate on April 5 passed a bill allowing women to participate in the choice of presidential electors.—In **Wisconsin** the attempt of the La Follette party to amend the primary election law in such a way as to enable a voter to express his second as well as his first choice for a candidate for office was defeated by the lower house on December 12.

MUNICIPAL AFFAIRS.—On April 3 the people of **Chicago** by a majority of 3,837 declared for municipal ownership of the street railways, but

in the same election refused by a majority of 10,651 to accept the principle of municipal operation. The question of issuing \$75,000,000 of so-called Mueller law certificates was answered in the affirmative.—In Milwaukee a mayoralty election resulted in an unexpected victory for the Republican candidate, Sherman M. Becker, over Mayor Rose. A feature of the election was a decided falling off in the Socialist vote.—The application of Mr. Hearst, one of the defeated candidates in the New York city municipal election of November, for a recount of the votes was refused on appeal by the court of appeals on December 13. Attempts to induce the legislature to authorize a recount were likewise fruitless. A law reducing the rate on gas in New York city from \$1 to \$.80 per thousand feet has been enacted and will go into effect May 1. In December the Interborough Rapid Transit Company, through August Belmont and Company, purchased all the interest of Thomas F. Ryan and his associates in the Metropolitan Securities Company and the Metropolitan Street Railway, thereby merging into one concern all the traction lines in Manhattan, including the subway, the elevated and the surface lines.—In January Israel Durham, one of the political bosses overthrown in November, retired from the Republican leadership in Philadelphia, and was succeeded by John M. Mack. Mayor Weaver has continued his career of reform.—In Seattle a municipal ownership candidate on a municipal ownership platform was elected mayor on March 7.

THE TRUST PROBLEM.—In February Congress passed a joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies in coal and oil. The president signed the resolution, but on March 7 transmitted to Congress a message in which he stated that he had done so with hesitation, partly because he feared such an investigation would do no good, partly because an investigation was already being conducted by the department of commerce and labor and partly because the investigation, if thoroughly and effectively conducted, would result in giving immunity from criminal prosecution to all persons who should be called, sworn and constrained by compulsory process of law to testify as witnesses. An extremely important principle was laid down on March 12 by the United States supreme court in deciding a case against the Tobacco Trust. The court held that the principle that "no man can incriminate himself" does not mean that an individual witness shall be excused from testifying against the corporation of which he is an employee or the officers thereof. Under this interpretation of the law it will now be possible to force trust employees and officials to produce books, papers, contracts, secret agreements and anything for which the court may call. By a decision of Judge Humphrey of the United States district court at Chicago in the Beef Trust cases all the individual defendants were discharged on the ground that they were entitled to immunity because Commissioner Garfield, of the bureau of corpo-

rations, had procured from them information as to their business and the matters covered in the indictments. In a special message to Congress on April 17 the president referred to the decision as coming "measurably near making the law a farce" and recommended that Congress pass a declaratory act stating the real meaning of the existing legislation regarding immunity and an act giving to the government the same right of appeal in criminal cases that the defendant has on questions of law.

LABOR AND CAPITAL.—On January 2 the chorus of the Metropolitan Opera House, having recently become members of a union, repudiated their contracts and demanded higher wages and recognition of their union. This novel strike was soon brought to an end by compromise.—On January 2 a strike, the chief center of which was in New York city, was begun by the International Typographical Union, which demanded an eight-hour day and the closing of the shops against non-union men. Arrayed against the strikers was the United Typothetae, a well organized combination of employers. The strike resulted in no definite victory for either side; for while many firms conceded the demands of the strikers, others were successful in either filling the places of the strikers or inducing them to return to work without granting any or all of their demands.—In the course of a strike in New York city of structural iron workers dynamite was several times used by the strikers against firms employing non-union men. One of the men concerned in an attempt of this kind on February 24 later confessed and implicated members of the union.—On December 30 ex-Governor Steunberg, who some years ago was active in prosecuting lawless miners of the Coeur d'Alene, was blown up by a bomb at his home at Caldwell, Idaho. A detective who years ago was instrumental in convicting the "Molly Maguires" secured the arrest of a man named Harry Orchard, who confessed that he had not only been guilty of this crime but that he had also been connected with twenty-five other murders of persons hostile to the miners' unions. He asserted that these crimes were committed at the instigation of the Western Federation of Miners. His confession was partly borne out by the fact that a concealed bomb, mentioned by him, was found at the gate of Supreme Court Justice Goddard at Denver. President Moyer, Secretary Haywood and other officers of the Western Federation of Miners have been arrested.—Early in February it was announced that a joint conference of soft-coal miners and operators which had been in session at Indianapolis had been unable to reach an agreement and that a general strike would probably take place on April 1, the date of the expiration of the then existing agreement. The demands presented by the miners were for an advance of five and one-half per cent in wages. About the same time the anthracite workers, whose agreement likewise was to expire with the end of March, presented to their employers demands for an advance of ten per cent in wages, together with an eight-hour day and a formal recognition of their union. The prospect of a strike on the part of the miners caused

widespread apprehension. On February 24 President Roosevelt addressed a letter to Mr. Francis L. Robbins, president of the Pittsburg Coal Company, and to Mr. John Mitchell, president of the United Mine Workers, urging that a further effort to avert the strike ought to be made. About the same time the United States Steel Corporation and several railroads brought pressure to bear on the soft-coal operators in order to induce them to make concessions. Partly as a result of these various influences, a second conference of the soft-coal men met at Indianapolis on March 19, but this conference produced no definite results, owing in part to differences among the operators. Many individual operators, however, granted the demands of their employees. Negotiations between the anthracite operators and their employees failed completely. On April 1, therefore, practically all the anthracite workers and many of the soft-coal workers quit work. The strike involves miners in fifteen states. Several attempts to arrive at an understanding have been made since the strike began, but thus far without success.—On April 16 a strike of about 4,000 linemen and other electrical employees of the Southern Bell Telephone Company began in Virginia, North Carolina and five other Southern states.—In January the appellate division of the New York supreme court in the district of New York city held unconstitutional a law making it a penal offence for an employer of labor to compel an employee to enter into an agreement not to join a labor union.

THE RACE PROBLEM AND LYNCHING.—According to figures furnished by the Chicago *Tribune*, the total number of persons lynched in the United States during the period from November 1 to April 21 is twenty-one, all of whom were colored. All the actual lynchings occurred south of Mason and Dixon's line, although race riots occurred at several places in the North.—Chattanooga, Tennessee, has been one of the chief centers for this kind of disturbance. On January 26 a mob estimated at from 3,000 to 4,000 men made an effort to break into the county jail and take away two negroes, supposed to be within, charged with attacking white girls. One side of the jail was badly wrecked, but the sheriff and police managed to hold the mob at bay until a company of militia arrived and dispersed it. On March 19 a mob in the same town broke into the jail and lynched a negro named Johnson, who had been convicted of rape by a state court, but who, on the ground that he had not had a fair trial, had been granted an appeal by the United States supreme court. The circumstances of the case aroused unusual interest, and it is thought that the supreme court will vigorously attempt to punish the persons who defied its authority. On March 26 threats were again made to take a negro named Wilson, who was accused of murder, from the Chattanooga jail, but such a show of force was made by the sheriff that the mob was overawed.—The town of Springfield, Ohio, was again disgraced on February 27, 28, and March 1 by an outbreak of race hatred. The occasion of the outbreak was a quarrel between a rail-

way brakeman named Martin Davis and two negroes, as a result of which the brakeman was fatally shot and one of the negroes was badly wounded. The negroes were arrested; and, to save them from lynching, the authorities took them to another town. A mob nevertheless collected and proceeded to the negro quarter, where they burned several houses and maltreated many innocent negroes. The local militia companies were called out but were slow in obeying and, when they did appear, were unable entirely to suppress the disturbance. Other companies were sent to Springfield, yet rioting continued for two days. Several more houses were burned and several persons injured.—On March 16 a mob of about 500 persons twice attempted to gain entrance to the county jail at Omaha, Nebraska, for the purpose of lynching eight murderers, some of them colored, who were supposed to be confined there; but the sheriff made a determined resistance, and both attempts failed.—At Crescent, Louisiana, a negro named Carr was lynched on March 17 for having stolen a cow.—On the night of March 14-15 a mob broke into the jail at Springfield, Missouri, and lynched three negroes, two of whom were accused of rape, and the third of murder. It is generally believed that two and perhaps all the prisoners were entirely innocent. All but six out of more than fifty prisoners in the jail are said to have escaped as a result of the affair. Governor Folk has announced a determination to secure the punishment of the mob and has offered a reward for evidence.—On December 12 the federal supreme court declined to entertain an appeal of Thomas W. Riggan from the refusal of the federal court in Alabama to release him by writ of *habeas corpus* from arrest on a charge that by lynching a negro named Horace Maples he and others had entered into a conspiracy to deprive the negro of his right to trial by jury. This case is the first attempt to punish the crime of lynching under federal law.—Considerable race antagonism was aroused during the winter by the performance in various parts of the country of a play called *The Clansman*, which purported to give a picture of negro rule in Reconstruction times.—The twenty-fifth anniversary of the founding of Tuskegee Institute was celebrated early in April. Many eminent educators were present.

III. LATIN AMERICA.

In January the government of Argentina withdrew its proclamation of martial law which had been issued in October as a result of numerous strikes. On March 12 President Quintana died and was succeeded by Vice-President Figueroa. The ministry resigned, and on the 15th a new ministry under Quirno Costa took office.—On January 22 the Brazilian cruiser "Aquadaban" was blown up by an accidental explosion of her magazine, and 223 of her crew were killed. On March 1 Dr. A. M. Penna, the vice-president, was chosen president of the republic.—In March a loan of \$18,500,000 for the construction of drainage systems in various towns was floated in New York and Berlin by the government of Chili. The ministry resigned on March 15, and a new one was later formed with Señor José Gut-

ierrez as premier and minister of the interior.—In the secondary election which took place on April 1 Cleto Gonzalez Viquez was elected president of Costa Rica.—In Colombia a conspiracy against the Reyes government was discovered on December 21 and the conspirators were arrested. On February 10 an unsuccessful attempt was made to assassinate the president.—During the presidential campaign in Cuba the Liberals, who supported Governor Gomez, asserted that the government was using illegal means and intimidation to carry the election, but the charge does not appear to have been well founded. In the election, which took place on December 1, the Conservatives won a sweeping victory; and in the electoral college, which met on March 19, President Palma was reelected unanimously.—In Ecuador a revolt against the Garcia government and in favor of the former president, General Alfaro, broke out on New Year's night. The government at first gained some victories, but the revolutionists were ultimately successful and Alfaro was declared president.—On December 10 the Congress of Paraguay deposed President Gaona and chose Señor Don Cecilio Baez as provisional president.—As a result of the opposition to his policies displayed by his cabinet, President Morales of Santo Domingo left the capital late in December, and the cabinet put Vice-President Caceres in his place. Troops were sent after Morales, and, after some fighting in which his forces were worsted, the ex-president, who had broken his leg in a fall, took refuge on January 11 at the United States legation at Santo Domingo city. In a message to Congress on February 27 President Caceres recommended a revision of the constitution, the improvement of the ports and of public roads, the enactment of laws benefitting agriculture, and declared himself in favor of the treaty with the United States.—Early in March 1900 leaders of the Nationalist party in Uruguay were arrested.—On April 9 General Castro, president of Venezuela, resigned his position temporarily into the hands of Juan Vincente Gomez, and stated that should his temporary retirement bring harmony and good will to the country he would make it permanent. It is not believed, however, that he has any intention of relinquishing power. (See also AMERICAN INTERNATIONAL RELATIONS, *supra*.)

IV BRITISH AMERICA AND AUSTRALASIA.

In Canada the first provincial election in the new province of Saskatchewan took place on December 13 and resulted in a sweeping Liberal victory.—The first session of the legislature of Alberta was held at Edmonton on March 15. The governor, Mr. Bulyea, said that the first laws to be enacted would be for the organization of the province on proper constitutional lines and the establishment of a university.—On January 16 the formal control of the fortifications of Halifax were taken over by the Canadian government.—In Australia the Commonwealth Parliament in December passed a law amending the former immigration law in favor of travellers from India and Japan.—In West Australia the parliamentary elections resulted in the return of 34 Ministerialists, 13 Labor members and 1 Independent

Labor member.—On December 6 the election in New Zealand resulted in an overwhelming victory for the Seddon ministry.—Lord Chelmsford, the new governor of Queensland, reached Brisbane on November 30.—In December the Legislative Assembly of New South Wales adopted a resolution expressing dissatisfaction at the treatment of the state by the federal government as regards the federal capital. A bill for establishing the capital at Dalgetty, New South Wales, was soon afterwards introduced in the federal Parliament.—A conference of Australian premiers began at Sydney on April 5.

V. EUROPE.

ENGLAND.—On December 4 Mr. Arthur Balfour, the prime minister, tendered to the king the resignation of the Conservative-Unionist ministry. His motives for doing so before he had been defeated in the Commons have been variously interpreted, but it is probable that his action was partly due to dissensions arising out of the Chamberlain program and partly to a desire to resign before a new election and thereby force the Liberals to face the disadvantage of taking office before the dissolution.—The king soon after sent for Sir Henry Campbell-Bannerman, and on December 5 Sir Henry undertook the task of forming a new ministry. This task he performed with remarkable success. His ministry included the following : Sir Edward Grey, secretary of state ; Herbert J. Gladstone, secretary of state for home affairs ; John Morley, secretary of state for India ; James Bryce, chief secretary for Ireland ; Mr. Haldane, secretary of war ; the Earl of Elgin, secretary for the colonies ; and the noted labor leader, Mr. John Burns, president of the local government board. Following the usual custom, Sir Henry himself took the position of first lord of the treasury. Mr. Winston Churchill was made under secretary for the colonies.—The new ministry, being without a majority in the Commons, decided upon an early appeal to the country. On January 8 the House of Commons was dissolved, and a new election was ordered. The main issue was that of fiscal reform, although Mr. Balfour and his followers made strenuous efforts to conjure up the spectre of home rule. The advocates of the Chamberlain program urged the great advantages which would inure to the empire if a preferential tariff policy should be adopted, and dwelt on the fact that because England was a free-trade country she was frequently at a great disadvantage in securing commercial treaties with such countries as Germany and the United States, which, having secured control of their home markets by means of high tariffs, were in a position to "dump" their surplus products upon British and other markets at extremely low prices. The Liberals pointed to the unbounded prosperity of Great Britain during half a century of free trade ; declared that the measures proposed by the revisionists would increase the cost of living and would bear most heavily on working-men ; and urged that it would, in reality, be a great misfortune to the empire if the imperial tie should come to be associated with an increase in

the price of bread.—The elections, which began on January 12, resulted in a sweeping victory for the Liberals. Mr. Chamberlain and seven Unionist candidates were returned by Birmingham; but Mr. Balfour was defeated in the borough of East Manchester, though he was later returned by a London constituency. A large number of the other members of the former ministry likewise suffered defeat. When Parliament met on February 13, the House of Commons consisted (with a few constituencies yet to be polled) of 429 Liberals (including 54 Laborites, of whom 33 were pledged to independent labor legislation), 157 Unionists and 83 Nationalists. One of the most notable features of the contest was the number of Labor candidates returned.—The king opened the new Parliament in person on February 13. In his speech from the throne he announced that responsible government would be granted to the Transvaal and to the Orange River Colony; that measures would be taken for improving the government of Ireland and "associating the people with the conduct of Irish affairs;" that the educational laws would be amended; that there would be legislation dealing with trade disputes, the compensation of workingmen, the unemployed, commercial corruption and to prevent plural voting at elections. Acts dealing with some of these subjects have already been passed, and bills embodying others are now being considered. On March 9 the House of Commons adopted a resolution to the effect that members ought to be paid £300 per year. Three days later the Commons, by a vote of 474 to 98, announced a determination "to resist any proposal, whether by way of taxation upon foreign corn or of the creation of a general tariff upon foreign goods, to create in this country a system of protection." One of the most debated subjects has been that of Chinese labor in the mines of the Transvaal (see ASIA AND AFRICA, *infra*).

FRANCE.—Aside from the negotiations regarding Morocco and the consequent strained relations with Germany (see INTERNATIONAL RELATIONS, *supra*), the most important events in French history during the last six months have been the election of a new president, the separation of church and state and the fall of the Rôvier ministry. The chief candidates for presidential honors were M. Paul Doumer, president of the chamber of deputies, and Clement Armand Fallières, president of the senate. The election took place without any disturbance at Versailles on January 17 and resulted in the choice of M. Fallières by a vote of 449 to 371. The president-elect, who is described as being much like M. Loubet and who enjoys a high reputation for good judgment, tact and probity, was formally inaugurated on February 18, and retained the Rôvier ministry without change. The Briand bill (see last RECORD, p. 765) defining the conditions of the separation of church and state and fixing the new régime under which the religious bodies are henceforth to enjoy an independent existence, was passed by the Senate on December 6 without amendment. The taking of inventories of church property required by the law met with great opposi-

tion in some of the provinces and even in Paris. At the church of Ste. Clothilde in Paris the officials, although assisted by the police and even by troops, were violently resisted by a mob of parishioners; and many persons on both sides were injured. Similar scenes occurred on the following day at the fashionable church of St. Pierre-du-Gros Caillou. Among those resisting were General Baron Rebillot, the Marquise de MacMahon, Baroness Reille and the Abbé Mayol de Lupé. At Saint Sigolène in the department of Haute Loire later in the month the threatening attitude of a crowd armed with scythes and red-hot bars of iron prevented the officials from performing their duty. Serious rioting occurred early in March in several of the provincial towns; at Boeschope, near Dunkirk, a manifestant was shot dead and the government commissioner was wounded.—One result of the religious troubles was the downfall of the Rouvier ministry. Although the senatorial elections early in January had been favorable to the ministry, a debate on March 7 in the Chamber of Deputies resulted in an unexpected combination against the government, and it was defeated by a vote of 267 to 234. M. Rouvier at once resigned. His resignation came at a critical time in the Algeciras negotiations and there was considerable anxiety lest Germany might take advantage of the crisis. After some delay a new ministry was formed by M. Sarrien. Among those who accepted positions under him were M. Clemenceau, minister of the interior, M. Bourgeois, minister of foreign affairs, M. Etienne, minister of war, and M. Briand, minister of public instruction and worship. The new ministry decided to follow the foreign policy of its predecessor and to enforce the Separation law, although M. Sarrien announced that he did not believe that the counting of church candlesticks was worth a single human life.—The deficit for the present year is estimated at \$11,400,000. M. Fallières was succeeded as president of the Senate by M. Antonin Dubost. On March 10 the most terrible mining disaster on record occurred in the Courrières district of Pas-de-Calais; about 1100 persons are reported to have lost their lives. As a protest against the management of the mines a miners' strike involving on March 16 about 30,000 men took place. The strike spread to other lines of work; dynamite outrages occurred at various places, and apprehensions of a general uprising on May 1 led the government to adopt repressive measures.

GERMANY.—The imperial Reichstag was opened by the emperor on November 28. In his speech the emperor welcomed Japan into the ranks of the great powers, expressed sympathy with the Russians in rearranging their domestic affairs, complained that there was a continued misconception abroad concerning Germany's intentions and stated that, although arrangements had been made for a Moroccan conference, the signs of the times were such that the nation must strengthen its defences and particularly its navy. The imperial estimates for the year were \$600,000,000. To increase the revenue it was proposed to levy death duties on inheritances on a scale ranging from 4 per cent to 20 per cent in accordance with the degree of

relationship of the heir and the value of the inheritance. Another proposal was for increased customs duties on imported beer and tobacco. A bill for prolonging the provisional commercial agreement with England passed the Reichstag on December 15, and on February 22 a measure granting most-favored-nation tariff rates to the United States until June 30, 1907, was also passed. On March 6 the appropriations committee approved a measure authorizing the construction of six additional armored cruisers and the increasing to 18,000 tons displacement of two battleships which were about to be laid down. This change in tonnage was due to the launching in England of the monster battleship "Dreadnought." On March 30 the Reichstag approved the emperor's long contemplated project of raising the colonial bureau of the foreign office to a ministry of the colonies. A bill providing for the payment of the members of the Reichstag was approved by the Federal Council in April, and was then submitted to the Reichstag.—The Prussian Diet was reopened on December 5. The royal speech was read by Prince Bülow. Among the legislative proposals which he announced would be submitted were bills for raising the house-rent allowance for the lower classes of officials, for railway extension, for a more equitable distribution of the income tax, for settling the maintenance of national schools and for a partial redistribution of seats in the Diet. The most remarkable feature of the speech was a concluding exhortation to the German element in the Polish districts to be mindful of their national obligations and not allow land to pass from German into Polish hands.—During the winter there was considerable agitation in various parts of the empire, particularly in Prussia, Bavaria, Saxony and Baden, for electoral reform. On January 21 ninety-three meetings for protesting against the injustice of the three-class electoral system, which in Prussia practically disfranchises about 1,750,000 Social Democrats, were held in and about Berlin. At Hamburg a bill to limit further the suffrage provoked a serious riot but the bill was nevertheless passed by the Bürgerschaft.—Other German events of some importance have been the appointment of Lieutenant-General Count von Moltke, nephew of the celebrated field-marshall, as chief of the general staff; the decision of Berlin and eight suburban towns to own and operate the street railways; and the publication of the results of the new census, which showed a population of 60,605,183, a net increase of 4,238,005 since 1900.

AUSTRIA-HUNGARY.—As a result of popular demonstrations in favor of universal suffrage Baron Gautsch, the Austrian premier, on November 11 stated that the government was preparing a franchise reform bill "on a modern basis and such as to satisfy the needs of the times." The Reichsrath reassembled on November 28, and Baron Gautsch announced that as soon as the house had disposed of certain pressing measures such a bill would be introduced. On the same day demonstrations in favor of the movement, in which from 200,000 to 300,000 persons participated, took

place in Vienna and smaller meetings occurred in other towns. On February 23 Baron Gautsch introduced a bill sweeping away the curia system and placing all elections on the same footing except where racial considerations necessitated a special arrangement. The number of seats were to be increased from 425 to 455. Every male citizen who has completed his twenty-fourth year and is not under legal disabilities is to be allowed to vote after residing one year in the electoral district. The bill met with much opposition from the Pan-Germans, who realized that it would decrease their influence; opposition to it was particularly strong in the upper chamber.—The Hungarian premier, Baron Fejervary, on October 29 announced a program including a large extension of the suffrage and numerous other progressive measures. The obstruction tactics of the Coalition were continued; and on December 20, finding himself practically powerless to accomplish anything, the premier tendered his resignation, but the king refused to receive it. Early in January the government undertook on its own responsibility to countersign the royal ratification of the commercial treaties with Austria, which all parties in Hungary admitted were indispensable, but which the parliamentary majority was not prepared to sanction. Early in February futile interviews occurred between the Coalition leaders and the king. On February 19, because the opposition refused to take office but persistently blocked legislation, a royal rescript dissolving the Parliament was read by a military officer representing General Nyiri, the royal commissioner. As threats had been made that the order would be disobeyed, troops were on hand to enforce it. A reaction in favor of the government now set in, and aggressive measures were adopted against the Coalition. As a result, that party modified its demands and on April 6 consented to a compromise. Premier Fejervary thereupon resigned and Alexander Wekerle undertook the formation of a new ministry composed of leaders of the Coalition.

ITALY.—One of the first bills introduced in the Chamber of Deputies when that body reassembled on November 28 provided for relieving the distress in Calabria by constructing railways and roads. A new *modus vivendi* with Spain, to take the place of that of 1892, was announced soon after; but, partly because it made no reserve in favor of Italian wines and partly because of mere obstruction, the arrangement was on December 16 rejected by the Chamber by a vote of 277 to 144. Signor Fortis thereupon tendered his resignation, but the king reserved his decision and ultimately prevailed upon the premier to form a new ministry, the composition of which leaned decidedly to the Left. The reconstructed ministry was, however, accused of having strong clerical sympathies; and, for this and other reasons, on February 1, after a long and violent debate over the government's program, a vote of confidence was lost by 221 to 188. Fortis again tendered his resignation; it was accepted, and Baron Sidney Sonnino, the eminent minister of finance under Crispi, formed a ministry, in which Count Guicciardini took the department of foreign affairs and Signor Luz-

zatti, the former premier, the department of the treasury. The new premier began his administration by issuing orders allowing complete freedom of the press.—The first passenger train passed through the Simplon tunnel on January 25.—Early in April occurred an eruption of Vesuvius which is reported to have been one of the most violent since the time of the destruction of Pompeii and Herculaneum. Many villages and towns were destroyed, many hundreds of persons lost their lives, and a number estimated at 150,000 were forced to flee from their homes.—On December 11 the pope held a secret consistory and announced his intention of creating four new cardinals.

RUSSIA.—On October 21 an organized strike for political purposes began on the Russian railways, and the railway employees were joined by vast numbers of industrial workers until it was estimated that over one million men were engaged in the movement. Although the czar on October 30 (see last RECORD, p. 769) issued a new charter of liberties and called Count Witte to the head of a responsible ministry, these concessions did not satisfy the strikers. They demanded "the immediate convocation of a constituent assembly elected by the universal, equal and direct suffrages of all adult citizens, without distinction of creed or nationality, and the provision of all guarantees of civic freedom." Anarchy reigned over the whole country. At Odessa more than five thousand people are said to have been killed or wounded, while terrible riots occurred at Kazan, Tiflis and elsewhere. At Kieff, Kishineff, Rostoff, Kherson and other towns horrible massacres of the Jews took place, unchecked by the authorities and perhaps in some cases even instigated by them for reactionary purposes. On November 9 a mutiny broke out among the sailors at Kronstadt, and a few days later another among both sailors and soldiers at Vladivostok, but both were suppressed. Commotions in Poland looking to the restoration of independence led to the proclamation of martial law in that country. On November 20 the strike was ended by order of the Central Labor Committee, but the workingmen were urged to further the revolutionary propaganda and to prepare themselves for "the last general encounter of all Russia with bloody monarchy now living in its last days." On November 19 a Zemstvo congress met at Moscow and on November 23 it passed a resolution demanding universal direct suffrage and the calling of a constituent assembly. The congress displayed a lack of confidence in the Witte ministry and advised Zemstvo representatives not to accept office under it.—The revolutionary movement now entered upon its most acute phase. On November 24 a combined strike and mutiny began at Sebastopol. The revolutionists captured the city, shot Admiral Pisarevsky and for some days controlled affairs almost completely. The government, however, dispatched overwhelming forces to the seat of the trouble; the rebel trenches were stormed; the ships were retaken; and many of the rebels were executed. Less important outbreaks occurred about the same

time at Kronstadt, Vladivostok and elsewhere. In December Lithuania and other regions around the Baltic were in open revolt; the Caucasus was in a flame of revolution; an outbreak occurred at Irkutsk; a new strike began; assassinations and attempted assassinations were everywhere common. One of the chief struggles took place in Moscow. For several days the rebels controlled a large part of the city; but after frightful barricade fighting, in which hundreds of men, women and children are reported to have lost their lives, order was gradually restored.—With the triumph of the government it was prophesied that a policy of thoroughgoing reaction would set in and that, temporarily at least, the concessions would go for naught. But, though thousands of arrests were made and hundreds of revolutionists were put to death, the czar did not give up the idea of convoking an assembly. On December 26 a more liberal electoral law was promulgated, which granted the suffrage to workmen in factories and mills, to every owner of real estate paying taxes, to persons conducting independent enterprises, such as shopkeepers, and to other classes. At the same time it was announced that the question of universal suffrage would be left to the Duma. Early in January registration for the election began. Charges were made that the minister of the interior, Durnovo, was seeking to control the election in the interests of reaction by arresting popular leaders and by repressing political assemblages; for this and other reasons the Revolutionary Socialists refused to register, but later changed their attitude. To make possible a full registration, the time originally granted was extended.—On March 5 an imperial manifesto elaborated the plan for the new assembly. Both the Duma and the Council of Empire, which latter will consist in future of an equal number of elected members and of members nominated by the czar, will be convoked and prorogued annually by imperial ukase. Each will have equal legislative powers and can exercise the same initiative in introducing bills and the same right of addressing questions to ministers. Every measure passed by the two must be sanctioned by the czar and, as was announced some weeks later, must be published by the Senate. If during the suspension of the sittings of the Duma extraordinary circumstances shall arise that call for legislative action, the council of ministers may lay the matter before the czar for immediate decision. Such matter must not, however, involve any change in the fundamental laws of the empire, the regulations governing the proceedings of the Council of the Empire and the Duma or the regulations regarding the proceedings or the election of these bodies; and such a measure lapses if not embodied in an act within two months after the assembling of the Duma.—Ukases published simultaneously with the manifesto promulgated the laws relating to the new constitutions of the Council of the Empire and of the Duma. The elective members of the Council will hold office for nine years, a third of the number being elected every three years. Each assembly of the Zemstvo of each government will

elect one member. Six members will be returned by the Synod of the orthodox church, six by the representatives of the Academy of Sciences and the universities, twelve by the representatives of the chamber of commerce and of industry, eighteen by the representatives of the nobility and six by the representatives of the landed proprietors of Poland, assembled in congress at Warsaw. The congress of the representatives of the Academy of Sciences, the nobility and the commercial and industrial communities, for the election of their members to the Council of Empire, will meet in St. Petersburg. In those provinces of European Russia which have no Zemstvo, a congress of the representatives of the landed proprietors will assemble in the chief town of their province to elect one member for each province to the Council of Empire.—All members of the Council must have attained their fortieth year and must have an academic degree. The president and vice-president will be appointed by the czar. The elective members of the Council will receive an honorarium of twenty-five rubles a day during the session. The sittings of both the Duma and of the Council of the Empire will be made public. Ministers will be eligible for the Duma and, in the capacity of elected members, qualified to vote.—Laws voted by the two houses will be submitted for the imperial sanction. The members of both bodies will have the privilege of personal immunity during the session and will be liable for arrest only with the consent of the body to which they belong, except for certain flagrant offences, or offences committed in the exercise of their duties.—Despite the use of the most outrageous methods by the reactionists, the elections to the Duma resulted in a sweeping victory for the Constitutional Democrats.—The first session of the Parliament will be held May 10.—On November 17 a manifesto was issued to the effect that the payments made by peasants for the use of lands would be reduced by one-half from January 1, 1906, and that they would be entirely abolished from January 14, 1907.—In Finland, as a result of a more or less passive rebellion which suspended all communication and paralyzed business, the czar on November 4 repealed many harsh ordinances, admitted the responsibility of the secretary of state to the Diet, convened a special session of the Diet to prepare laws granting freedom of speech, of the press, of public meeting and of association, and for the establishment of a national assembly based on universal suffrage. Prince Obolensky resigned the governor-generalcy, and on November 30 a constitutional senate was appointed.

MINOR EUROPEAN STATES.—The vote on the question of offering the Norwegian throne to Prince Charles of Denmark (see last RECORD, p. 772) was taken on November 13, and the question was decided in the affirmative by 259,936 to 67,554. On November 26 the Storthing elected him unanimously. Prince Charles accepted the throne thus tendered, chose the name of Haakon VII, and on November 25, with his wife, the Princess Maud, daughter of Edward VII, and their little son, made his entry into

Christians. Two days later he took the oath of office.—A new Swedish ministry, the first on purely liberal parliamentary lines in the history of the country, took office on November 7. The Parliament was opened on January 15. In his speech from the throne the king informed the Riksdag that bills would be presented during the session for extending the franchise for elections to the second chamber, for remodeling the system of defence, for reorganizing the diplomatic and consular service and for improving the condition of the working classes. The electoral measure, as later elaborated, provides for what is practically manhood suffrage and for a new delimitation of electoral districts every nine years. 65 of the members of the Riksdag are to be returned from the towns and 165 from the country.—King Christian IX of Denmark, died suddenly on January 29 at the age of 88 years. His death caused universal regret among his subjects and threw most of the European courts into mourning. On January 30 his son was proclaimed as Frederick VIII.—M. Forrer of the Radical Left was elected president of the Swiss Confederation in December.—On December 1 Señor Ríos, the Spanish premier, found it necessary to tender his resignation, and Señor Moret was entrusted with the task of forming a new ministry. Serious disturbances took place at Barcelona in the course of the winter, and the constitutional guarantees were for a time suspended. In February the betrothal of King Alfonso to Princess Victoria Eugenie, daughter of Prince Henry of Battenberg, was announced. The princess, who was a Protestant, has changed her religion.—The Portuguese premier, Senhor Luciano de Castro, reconstructed his ministry in December. In opening the Cortes on February 1 King Carlos announced that the government would soon submit a commercial treaty with Switzerland and said that similar treaties were pending with France, Germany, Great Britain and Italy. He also urged the development and extension of certain colonial railways. In March a new ministry was formed by Senhor Hintze Ribeiro.—Early in November Prince Nicholas of Montenegro issued a manifesto announcing the establishment of a representative assembly. The elections were held on November 27 and the assembly met on December 16. In a speech from the throne on the 18th the prince proclaimed a liberal constitution and declared a constitutional monarchy.—In Greece the Ralli ministry resigned late in December, and a new one was formed by M. Theotokis. The elections on April 8 resulted in the return of 120 Theotokists, 42 Rallists, seven Zaimists and eight independents.—A new ministry under Sava Grouitch took office in Servia on March 13.—Despite the concession by the sultan of Turkey of an international board of financial control, Macedonia has continued to be the scene of frequent disturbances.—In November the insurgents in Crete were called upon to give up their arms, and many did so. On the 24th Prince George issued a proclamation of amnesty.

VI. ASIA AND AFRICA.

The revolt of the Arabs in Yemen still continues. The Turkish troops

have suffered several reverses.—As a result of protests by a thousand merchants and mullahs, the shah of Persia promised to establish a representative assembly. The assembly is to be elected by mullahs, merchants and landowners, and is to be under the presidency of the shah. It will be called "the House of Justice," and will possess both legislative and administrative powers. Equality for all under the law is to be proclaimed and all favoritism is to be abolished. Early in April about twenty foreigners, mostly Armenians, were killed in an anti-foreign outbreak at Meshed.—The Prince and Princess of Wales landed at Bombay on November 9 and began an extended tour through India. Lord Minto, the new viceroy, reached Bombay on December 18. The decision announced by John Morley, secretary of state for India, upon the questions at issue between Lord Kitchener and the civil government was on the whole, favorable to the former.—In China numerous anti-foreign outbreaks (see INTERNATIONAL RELATIONS, *supra*) have occurred, and there have been many signs of a spirit of "China for the Chinese." Considerable progress has been made toward establishing and drilling a modern army. Toward the end of the year two commissions left China for the purpose of studying the political, social and industrial institutions of the United States and Europe.—On November 18 the Korean government acceded to the Japanese demand that the diplomatic affairs of Korea should be transferred to Tokio, that a resident-general should reside at Seoul, and that Japanese garrisons should be established at important places. In December Marquis Ito was appointed first resident-general.—On December 21 Marquis Yamagata was named president of the Japanese privy council. The Katsura ministry, which had become unpopular as a result of the Peace of Portsmouth and of the harsh measures taken by it to suppress dissatisfaction, resigned early in January, and a Constitutionalist ministry was formed by Marquis Saionji. A famine has caused great distress in some districts, particularly in the north, and contributions of food and money have been forwarded from foreign countries. On March 16 a bill for the nationalization of all railways in private hands passed the House of Representatives. The cost is estimated at \$250,000,000. The price paid is to be twenty times the average yearly profits of the three years preceding the beginning of the war.—It was announced in March that the Egyptian revenue for 1905 was £14,813,346, that the surplus was £2,688,524 and that the debt had been reduced by £4,791,460.—The new railway between Fort Sudan and Berber was inaugurated on January 27 by Lord Cromar, who announced other important works for the opening up of the Sudan. In February an uprising took place at Sokoto and several Englishmen and native troops were killed. A punitive expedition in March defeated the rebels with great slaughter.—A native uprising broke out in Natal on February 8. After some fighting several of the ringleaders were captured and were condemned to death, but before they were executed the home government interfered and ordered that their execution be postponed until an in-

vestigation had been made. As a protest against this interference, the Natal cabinet resigned; the home government then withdrew its objections, and the cabinet once more took office. The revolt has not yet been entirely put down.—Soon after the Liberal ministry came into power in England Lord Elgin, the colonial secretary, ordered a suspension of the introduction of Chinese for labor in the mines of the Transvaal until the people of the colony should decide the question for themselves. Not long afterward it was announced that the colony was to be granted responsible government. This policy on the part of the home government caused much rejoicing among the Boers, but aroused much apprehension and antagonism among the mine owners. The South African compensation committee has completed its work of examining into the claims for losses sustained in the Boer war and has awarded the sum of \$47,500,000 for the settlement of these claims.—The revolt of the Hereros in German Southwest Africa still continues. The Germans have gained some minor successes but have been unable to capture all the rebels. By March 19 the cost of the war was about \$150,000,000.

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ECONOMIC WASTES IN TRANSPORTATION

THE vast extent of the United States, the necessity of transporting commodities great distances at low cost and the progressiveness of railway managers has led to an extraordinary development of one phase of rate making. This is the principle of the flat rate, based upon the theory that distance is a quite subordinate if not indeed entirely negligible element in the construction of freight tariffs under circumstances of competition. Albert Fink fully accepted this principle in his classic *Report upon the Adjustment of Railroad Transportation Rates to the Seaboard* almost twenty-five years ago.¹ Mr. J. C. Stubbs, traffic manager of the Harriman lines, speaking of transcontinental business in 1898, clearly expressed it as "the traditional policy of the American lines as between themselves to recognize and to practice equality of rates as the only reasonable and just rule . . . regardless of the characteristics of their respective lines, whether equal in length or widely different . . .". Professor H. R. Meyer, formerly of the University of Chicago, both in his testimony before the Elkins Committee² and in his *Government Regulation of Railway Rates*, is the most prominent academic exponent of this principle. It is the theory upon which the Southern basing-point system is founded; and it is the common practice in making rates into and out of New

¹ P. 41.

² *Question of Canadian-Pacific Freight Differentials, Hearings, &c., Oct. 12, 1898*, p. 118. Cf. quotation on p. 391 *infra*.

³ Vol. ii, pp. 1552 *et seq.*

England—being in fact vital to the continued prosperity of this out-of-the-way territory. President Tuttle of the Boston & Maine Railroad has most ably supported this principle of equality of rates irrespective of distance. "It is a duty of transportation companies," he says,

to so adjust their freight tariffs that, regardless of distance, producers and consumers in every part of this country shall, to the fullest extent possible, have equal access to the markets of all parts of this country and of the world, a result wholly impossible of attainment if freight rates must be constructed upon the scientific principle of tons and miles¹ . . .

This is the principle of the blanket rate attacked in the famous Milk Producers' Protective Association case in 1897, and it is the practice which has been so fully discussed of late, as generally applied to lumber rates from the various forest regions of the United States into the treeless tract of the Middle West.² The principle, while applied thus generally in the construction of tariffs, is of far greater applicability in the making of special or commodity rates. Under such rates probably three-fourths of the tonnage of American railways is at present moved. The essential principle of such special rates, constituting exceptions to the classified tariffs, is that of the flat rate; namely, a rate fixed in accordance with what the traffic will bear, without regard to the element of distance.

Such general acceptance, both in practice and theory, of the principle that distance is a relatively unimportant element in rate making is significant at this time, in connection with the recent amendment of the Act to Regulate Commerce. It is important also because of the marked tendency toward the adoption by various state legislatures of the extreme opposite principle of a rigid distance tariff. The old problem of effecting a compromise between these two extreme theories by some form of long and short haul clause—the original section 4 of the act of 1887 having been emasculated by judicial interpretation—is

¹ Int. Com. Com., *Int're Rates on Import and Domestic Traffic*, Feb. 28, 1903, p. 7.

² Elkins Committee, vol. iii, pp. 2189-91.

again brought to the front. For these reasons it may be worth while to consider certain results which inevitably follow the widespread acceptance of this principle of the blanket rate. Its benefits are indeed certain; namely, an enlargement of the field of competition, and an equalization of prices over large areas, and that too at the level of the lowest or most efficient production. But these advantages entail certain consequences—of minor importance, perhaps, but none the less deserving of notice.

I

The subordination of distance to other factors in rate making is a logical derivation from the theory of joint cost. This theory justifies the classification of freight; namely, a wide range of rates nicely adjusted to what the traffic in each particular commodity will bear, while always allowing each to contribute something toward fixed and joint expenses. In the same way it explains a close correlation of the distance charge to what each commodity will bear. It assumes that any rate, however low, which will yield a surplus over expenses directly incidental to the increment of traffic and which thus contributes something toward indivisible joint costs, serves not only the carrier by increasing his gross revenue, but at the same time lightens the burden of fixed expenses upon the balance of the traffic. This principle of joint cost, so clearly set forth by Professor Taussig,¹ is fundamental and comprehensive. It pervades every detail of rate making. But it rests upon two basic assumptions which, while generally valid, are not universally so. In the first place each increment of traffic must be *new business*, not tonnage wrested from another carrier and offset by a loss of other business to that competitor. And secondly, each increment of traffic must be *economically suitable* to the particular carriage in contemplation.

The first of these assumptions fails wherever two carriers mutually invade each other's fields or traffic. Each is accepting business at a virtual loss, all costs including fixed charges on capital being taken into account, in order to secure the in-

¹ *Quarterly Journal of Economics*, vol. v, p. 438.

rement of business. Each gain is offset by a corresponding loss. It is the familiar case of the rate war. A less familiar aspect of the matter is presented when traffic is disadvantageously carried by two competing roads, each diverting business from its natural course over the other's line. The sum total of traffic is not increased. Each carries only as much as before but transports its quota at an abnormal cost to itself. This may, perhaps, swell gross revenues; but by no process of legerdemain can the two losses in operating cost produce a gain of net revenue to both. And each increase of *unnatural* tonnage, where offset by a loss of natural business, instead of serving to lighten the common fixed charges, becomes a dead weight upon all the remaining traffic. The commonest exemplification of this is found in the circuitous transportation of goods, instances of which will be given later.

The second case in which the principle of joint cost fails to justify charges fixed according to what the traffic will bear may arise in the invasion of two remote markets by one another; or, as it might be more aptly phrased, in the overlapping of two distant markets. A railroad is simultaneously transporting goods of like quality in opposite directions. Chicago is selling standard hardware in New York, while New York is doing the same thing in Chicago. Prices are the same in both markets. Of course if the two grades of hardware are of unequal quality, or if they are like goods produced at different cost, an entirely distinct phase of territorial competition is created. But we are assuming that these are standard goods and that there are no such differences either in quality or efficiency of production. What is the result? Is each increment of business to the railroad a gain to it and to the community? The goods being produced at equal cost in both places, the transportation charge must be deducted from profits. For it is obvious that the selling price cannot be much enhanced. The level of what the traffic will bear is determined not, as usual, by the value of the goods but by other considerations. The traffic will bear relatively little, no matter how high its grade.

The result is that the carrier, in order to secure the tonnage, must accept it at a very low rate, despite the length of the haul.

This is the familiar case of the special or commodity rate granted to build up business in a distant market. Special rates confessedly form three-fourths of the tonnage of American railways, as has already been said. The assumption is usually made that such traffic is a gain to the railways, justified on the principle of joint cost as already explained. But does it really hold good in our hypothetical case? There is a gain of traffic in both directions, to be sure. But must it not be accepted at so low a rate that it falls perilously near the actual operating cost? It is possible that even here it may add something to the carriers' revenue, and thereby lighten the joint costs in other directions. But how about the community and the shipping producers? Are any more goods sold? Perhaps the widened market may stimulate competition, unless that is already keen enough among local producers in each district by itself. The net result would seem to be merely that the railroads' gain is the shippers' loss. There is no addition to, but merely an exchange of, place values. Both producers are doing business at an abnormal distance under mutually disadvantageous circumstances. It may be said, perhaps, that the situation will soon correct itself. If the freight rates reduce profits, each group of producers will tend to draw back from the distant field. This undoubtedly happens in many cases. But the influence of the railway is antagonistic to such withdrawal. It is the railway's business to widen, not to restrict, the area of markets. "The more they scatter the better it is for the railroads." "Keep everyone in business everywhere." And if necessary to give a fillip to languishing competition, do so by a concession in rates. Is there not danger that with a host of eager freight solicitors in the field, and equally ambitious traffic managers in command, a good thing may be overdone, to the disadvantage of the railway, the shippers and the consuming public?

An objection to this chain of reasoning arises at this point. Why need the public or other shippers be concerned about the railways' policy in this regard? Is not each railway the best judge for itself of the profitableness of long-distance traffic? Will it not roughly assign limits to its own activities in extending business, refusing to make rates lower than the actual inci-

dental cost of operation? And are not all low long-distance rates, in so far as they contribute something toward joint cost, an aid to the short haul traffic? The answer will in a measure depend upon our choice between two main lines of policy: the one seeking to lower *average* rates, even at the expense of increasing divergence between the intermediate and the long-distance points; the other policy seeking, *not so much lower rates as less discriminatory rates* between near and distant points. In the constant pressure for reduced rates in order to widen markets it is not unnatural that the intermediate points, less competitive probably, should be made to contribute an undue share to the fixed sum of joint costs. The common complaint to-day is not of high rates but of relative inequalities as between places. It is a truism to assert that it matters less to a shipping point what rate it pays than that its rate, however high, should be the same for all competing places. This immediately forces us to consider the consumer. What is the effect upon the general level of prices of the American policy of making an extended market the touchstone of success, irrespective of the danger of wastes arising from overlapping markets? That the result may be a general tax upon production is a conclusion with which we shall have later to do. Such a tax, if it exists, would go far to offset the profit which unduly low freight rates in general have produced. In short, the problem is to consider the possible net cost to the American people of our highly evolved and most efficient transportation system. Our markets are so wide, and our distances so vast, that the problem is a peculiarly American one.

II

Having stated the theory of these economic wastes, we may now proceed to consider them as they arise in practice. Concrete illustration of the effect of disregard of distance naturally falls into two distinct groups. Of these the first concerns the circuitous carriage of goods; the second, their transportation for excessive distances. Both alike involve economic wastes, in some degree perhaps inevitable, but none the less deserving of evaluation. And both practices, even if defensible at times,

are exposed to constant danger of excess. It will be convenient also to differentiate sharply the all-rail carriage from the combined rail and water transportation. For as between railroads and waterways the difference in cost of service is so uncertain and fluctuating that comparisons on the basis of mere distance have little value.

Recent instances of wasteful and circuitous all-rail transportation are abundant. A few typical ones will suffice to show how common the evil is. President Ramsay of the Wabash has testified as to the round-about competition with the Pennsylvania Railroad between Philadelphia and Pittsburg by which sometimes as much as 57 per cent of traffic between those two points may be diverted from the direct route. "They haul freight 700 miles around sometimes to meet a point in competition 200 miles away."¹ Chicago and New Orleans are 912 miles apart, and about equally distant—2500 miles—from San Francisco. The traffic manager of the Illinois Central states that that company "engages in San Francisco business directly *via* New Orleans from the Chicago territory, and there is a large amount of that business, and we engage in it right along."² This case therefore represents a superfluous lateral haul of nearly a thousand miles between two points 2500 miles apart. The Canadian Pacific used to take business for San Francisco, all-rail, from points as far south as Tennessee and Arkansas, diverting it from the direct way *via* Kansas City.³

Goods moving in the opposite direction from San Francisco have been hauled to Omaha by way of Winnipeg, journeying around three sides of a rectangle by so doing, in order to save five or six cents per hundred pounds.⁴ Between New York and New Orleans nearly one hundred all-rail lines may compete for business. The direct route being 1340 miles, goods may be car-

¹ Senate (Elkins) Committee Report, 1905, vol. iii, pp. 2152-3. The transverse Buffalo, Rochester and Pittsburg seems to be the feeder for the New York Central and the Reading.

² *Ibid.* vol. iv, p. 2849.

³ Question of Canadian-Pacific Differentials, Hearings, &c., Oct. 12, 1898, p. 115. Privately printed. Cf. also the Sunset Route, *ibid.* p. 116.

⁴ 51st Congress, 1st sess., Sen. Rep. no. 847, p. 176.

ried 2051 miles *via* Buffalo, New Haven (Ind.), St. Louis and Texarkana.¹ A generation ago conditions were even worse, the various distances by competitive routes between St. Louis and Atlanta ranging from 526 to 1855 miles.² New York business for the West was often carried by boat to the mouth of the Connecticut river, and thence by rail over the Central Vermont to a connection with the Grand Trunk for Chicago. To be moved at the outset due north 200 miles from New York on a journey to a point—Montgomery, Ala.—south of southwest seems wasteful; yet the New York Central is in the field for that business.³ It is nearly as uneconomical as in the old days when freight was carried from Cincinnati to Atlanta *via* the Chesapeake and Ohio, thence down by rail to Augusta and back to destination.⁴ Even right in the heart of eastern trunk-line territory, such things occur in recent times. The Cincinnati, Hamilton and Dayton prior to its consolidation with the Père Marquette divided its eastbound tonnage from the rich territory about Cincinnati among the trunk lines naturally tributary. But no sooner was it consolidated with the Michigan road than its eastbound freight was diverted to the north—first hauled to Toledo, Detroit and even up to Port Huron, thence moving east and around Lake Erie to Buffalo.⁵ In the Chicago field similar practices occur. Formerly the Northwestern road was charged with making shipments from Chicago to Sioux City *via* St. Paul. This required a carriage of 670 miles between points only 536 miles apart; and the complaint arose that the round-about rate was cheaper than the rate by the direct routes. I am privately informed that the Wisconsin Central at present makes rates between these same points in conjunction with the Great Northern, the excess distance over the direct route being 283 miles. Complaints before the Elkins Committee⁶ are not

¹ *Pubs. Amer. Stat. Ass.*, June, 1896, p. 73.

² Reports Internal Commerce, 1876, pp. 54-9.

³ Map in Brief of Ed. Baxter, U. S. Supreme Court in the Alabama Midland case.

⁴ Windom Committee, vol. ii, p. 795.

⁵ New York *Evening Post*, Sept. 30, 1905.

⁶ 51st Cong., 1st sess., Sen. Rep. 847, p. 637.

⁷ Elkins Committee, vol. iii, p. 1831.

widely different in character. Thus it appears that traffic is hauled from Chicago to Des Moines by way of Fort Dodge at lower rates than it is carried direct by the Rock Island road, despite the fact that Fort Dodge is 80 miles north and a little west of Des Moines. The Illinois Central, having no line to Des Moines, pro-rates with the Minneapolis and St. Louis, the two forming two sides of a triangular haul. An interesting suggestion of the volume of this indirect routing is afforded by the statistics of merchandise shipped between American points which passes through Canada in bond.¹ The evidence of economic waste is conclusive.

A common form of wastefulness in transportation arises when freight from a point intermediate between two termini is hauled to either one by way of the other. Such cases are scattered throughout our railroad history. One of the delegates to the Illinois Constitutional Convention of 1870 cites, as an instance of local discrimination, the fact that lumber from Chicago to Springfield, Ill., could be shipped more cheaply by way of St. Louis than by the direct route.² And now a generation later, it appears that grain from Cannon Falls, 49 miles south of St. Paul on the direct line to Chicago, destined for Louisville, Ky., can be hauled up to St. Paul on local rates and thence on a through billing to destination, back over the same rails, considerably

¹ Only once compiled in detail. U. S. Treasury Dept., Circular no. 37, 1898. The volume of traffic by tons between points in designated states by way of Canada was as follows:

From Illinois to California	11,800
From Illinois to New Jersey	80,000
From Illinois to Pennsylvania	123,000
From Kentucky to Pennsylvania	1,005
From Kentucky to New York	5,516
From Missouri to Pennsylvania	5,000
From Pennsylvania to Missouri	13,824
From New York to Kentucky	3,357
From New York to Missouri	12,869
From New York to Tennessee	609
From Ohio to Pennsylvania	26,801
From Pennsylvania to Ohio	5,251
From Ohio to New York	211,657
From New York to Ohio	55,243

² Debates, vol. ii, p. 1646, cited in University of Illinois Studies, Mar., 1904, p. 21.

cheaper than by sending it as it should properly go.¹ The Hepburn Committee reveals shipments from Rochester, N. Y. to St. Louis, Minneapolis or California, all rail, on a combination of local rates to New York and thence to destination.² Presumably the freight was hauled 300 miles due east and then retraced the same distance; as New York freight for southern California is today hauled to San Francisco by the Southern Pacific and then perhaps 300 miles back over the same rails. Even if the rate must be based on a combination of low through rates and higher local rates, it seems a waste of energy to continue the five or six hundred miles extra haul. Yet the practice is common in the entire Western territory. From New York to Salt Lake City by way of San Francisco is another instance in point.³ Of course a short haul to a terminal to enable through trains to be made up presents an entirely different problem of cost from the abnormal instances above mentioned.⁴

Carriage by water is so much cheaper and as compared with land transportation is subject to such different rate-governing principles, that it deserves separate consideration. Mere distance, as has already been said, being really only one element in the determination of cost, a circuitous water route may in reality be more economical than direct carriage overland. Yet beyond a certain point, regard being paid to the relative cost per mile of the two modes of transport, water-borne traffic may entail economic wastes not incomparable to those arising in land transportation. In international trade, entirely confined to vessel carriage, a few examples will suffice for illustration. Machinery for a stamp mill, it was found, could be shipped from Chicago to San Francisco by way of Shanghai, China, for fifteen cents per hundred weight less than by way of the economically proper route. Were the goods ever really sent

¹ Elkins Committee, vol. i, pp. 32-34. Cf. also Cannon Falls Elevator Co. case, decided by the Int. Com. Com., Mar. 25, 1905.

² P. 2031.

³ Elkins Committee, 1905, vol. ii, p. 921.

⁴ Cullom Committee, vol. ii, p. 101.

by so indirect a route?¹ It would appear so when wheat may profitably be carried from San Francisco to Watertown, Mass., after having been taken to Liverpool, stored there, reshipped to Boston, thereafter even paying the charges of a local haul of nearly ten miles;² or when shipments from Liverpool to New York may be made *via* Montreal to Chicago, and thence back to destination.³ I am credibly informed that shipments of the American Tobacco Co. from Louisville, Ky., to Japan used commonly to go *via* Boston. Denver testimony is to the effect that machinery, made in Colorado, shipped to Sydney, Australia, can be transported *via* Chicago for one-half the rate for the direct shipment; and that on similar goods even Kansas City could ship by the carload considerably cheaper by the same round-about route. Conversely straw matting from Yokohama to Denver direct must pay \$2.87 per hundred pounds; while if shipped to the Missouri river, 500 miles east of Denver, and then back, the rate is only \$2.05.⁴

As a domestic problem, water carriage confined to our own territory has greater significance in the present inquiry. Purely coastwise traffic conditions are peculiar and in the United States, as a rule, concern either the South Atlantic seaports or transcontinental business. As to the first named class, the volume and importance of the traffic is immense. Its character may be indicated by a quotation from a railroad man.

Now a great deal has been said, chiefly on the outside, about the Canadian Pacific Railway seeking by its long, circuitous and broken route to share in a tonnage as against more direct and shorter lines all-rail, and I propose to show to you gentlemen that not only have we a precedent on which to claim differentials, many of them, and that we also have numerous precedents to show that there are numerous broken, circuitous water-and-rail lines operating all over the country that are longer and more circuitous than ours, and still they do operate with more or less success. . . . In saying this I do not wish to be understood as criticising the right of any road to go anywhere, even with a

¹ Report Int. Com. Com., *In re Publication and Filing of Tariffs on Export and Import Traffic*, decided Feb. 5, 1904, p. 81.

² Elkins Committee, vol. ii, p. 919.

³ *Ibid.*, p. 1624.

⁴ Int. Com. Com. case, no. 723, Kindel *vs.* B. & A. R. R., *etc.*, p. 508.

broken and circuitous line, to seek for business, so long as they are satisfied that taking all the circumstances into account such business will afford them some small measure of profit. . . .

The distance by the Chesapeake & Ohio Road, Boston to Newport News, is 544 miles by water; Newport News to Chicago, 1071 miles, total 1615 miles from Boston to Chicago, against 1020 miles by the shortest all-rail line from Boston, showing the line *via* Newport News, 58 per cent longer. The distance by the Chesapeake and Ohio from New York to Newport News is 305 miles, to which add 1071 miles, Newport News to Chicago, total 1376 miles, against the shortest all-rail line of 912 miles, 50.87 per cent longer. Again the distance between Boston and Duluth by all-rail is 1382 miles, against 2195 miles *via* Newport News and Chicago, 58.82 per cent longer by the broken route.

The Southern Pacific Co., or System rather, in connection with the Morgan line steamers carries business, *via* New York, New Orleans and Fort Worth, to Utah points at a differential rate. The distance from New York to Denver *via* water to New Orleans thence rail to Fort Worth is 3155 miles, against 1940 miles by the direct all-rail line, showing it to be longer *via* New Orleans 62.61 per cent.¹

Allowing a constructive mileage of one-third for the last named water haul,² many of these even up fairly well with the all-rail carriage; although a route from New York to Kansas City by way of Savannah, Georgia, would appear to be an extreme case, owing to the relatively long haul by rail.³ The increasing importance of Galveston and the necessity of a back haul to compensate for export business make it possible for that city to engage in business between New York and Kansas City, although the roundabout route is two and one-half times as long as the direct one.⁴ As compared with these examples, it is no wonder that the competition for New York-Nashville or New England-Chattanooga business by way of Savannah, Mobile or Brunswick, Georgia, is so bitter. The roundabout

¹ Question of Canadian Pacific Freight Differentials, Hearings, *etc.*, Oct. 12, 1898, p. 17. Privately printed. See also pp. 72 and 116 on the same point.

² Record Cincinnati Freight Bureau case, vol. ii, p. 306.

³ Hearings, Question of Can. Pac. Freight Differentials, Oct. 12, 1898, p. 55.

⁴ U. S. Industrial Commission, vol. iv, p. 134.

traffic thus reaches around by the southern ports and nearly up again to the Ohio river.¹

The second great class of broken rail and water shipments consists of transcontinental business. Goods from New York to San Francisco commonly go by way of New Orleans or Galveston,² as well as by Canadian ports and routes.³ In the opposite direction, goods are carried about 1000 miles by water to Seattle or Vancouver before commencing the journey east. But more important, as illustrating this point, is the traffic from the Central West which reaches the Pacific coast by way of Atlantic seaports. As far west as the Missouri, the actual competition of the trunk lines on California business has since 1894⁴ brought about the condition of the "blanket" or "postage stamp" rate. The same competitive conditions which open up Denver or Kansas City to New York shippers by way of New Orleans or Galveston enable the Southern Pacific railroad or Cape Horn routes to solicit California shipments in Western territory to be hauled back to New York, and thence by water all or part of the way to destination. How important this potential competition is—that is to say, what proportion of the traffic is interchanged by this route—cannot readily be determined.

Transportation over undue distances—the carriage of coals to Newcastle in exchange for cotton piece goods hauled to Lancashire—as a product of keen commercial competition may involve both a waste of energy and an enhancement of prices in a manner seldom appreciated. The transportation of goods great distances at low rates, while economically justifiable in opening up new channels of business, becomes wasteful the moment such carriage, instead of creating new business, merely

¹ 55th Cong., 1st sess., Sen. Doc. no. 39, p. 88.

² By water from New York, 1800 miles to New Orleans, with 2489 miles by rail. Or to Galveston 2300 miles, with 2666 miles by rail, a total of 4966 miles. The direct line, all rail, is about 3300 miles. Allowing constructive mileage of 3 to 1 for water carriage, they are far from equal.

³ Texas cotton bound for Yokohama by way of Seattle.

⁴ On these matters the Record of the Business Men's League of St. Louis case before the Interstate Commerce Commission; and the Hearings on Canadian Pacific Differentials are illuminating.

brings about an exchange between widely separated markets, or an invasion of fields naturally tributary to other centres. The wider the market, the greater is the chance of the most efficient production at the lowest cost. The analogy at this point to the problem of protective tariff legislation is obvious. For a country to dispose of its surplus products abroad by cutting prices may not involve economic loss; but for two countries to be simultaneously engaged in "dumping" their products into each other's markets is quite a different matter. In transportation such cases arise whenever a community, producing a surplus of a given commodity, supplies itself, nevertheless, with that same commodity from a distant market. It may not be a just grievance that Iowa, a great cattle raising state, should be forced to procure her dressed meats in Chicago or Omaha;¹ for in this case some degree of manufacture has ensued in these highly specialized centres. But the practice is less defensible where the identical product is redistributed after long carriage to and from a distant point. Arkansas is a great fruit raising region; yet so cheap is transportation that dried fruits, perhaps of its own growing, are distributed by wholesale grocers in Chicago throughout its territory. The privilege of selling rice in the rice-growing states from Chicago is, however, denied by the Southern Railway Association.² An illuminating example of similar character occurs in the Southern cotton manufacture, as described by a Chicago jobber.

Right in North Carolina there is one mill shipping 60 carloads of goods to Chicago in a season, and a great many of these same goods are brought right back to this very section. . . . I might add that when many of these heavy cotton goods made in this southeastern section are shipped both to New York and Chicago and then sold and re-shipped South, they pay 15 cents to 20 cents per hundred less each way to New York and back than *via* Chicago. This doubles up the handicap against which Chicago is obliged to contend and renders the unfairness still more burdensome.³

¹ Elkins Committee, vol. iii, p. 1830.

² Record before the I. C. C.; Cincinnati Freight Bureau case, vol. i, p. 166.

³ Elkins Committee, vol. iii, pp. 2540-41.

Not essentially different is a case recently brought before the Interstate Commerce Commission, outlined to me by the chairman, Hon. Martin A. Knapp. A sash and blind manufacturer in Detroit was seeking to extend his market in New England. At the same time it appeared that other manufacturers of the same goods located in Vermont were marketing their product in Michigan. The burden of the complaint of the Detroit producer was not directed to this invasion of his home territory; but rather to the fact that the freight rate from Boston to Detroit, probably due to back loading, was only about one-half the rate imposed upon goods in the opposite direction, from Detroit to the seaboard. Is not this an anomalous situation? Two producers presumably of equal efficiency in production are each invading the territory naturally tributary to the other and are enabled to do so by reason of the railway policy of "keeping everyone in business" everywhere, regardless of distance. President Tuttle of the Boston and Maine Railroad is perhaps the most outspoken exponent of this policy, it being in a sense a necessity imposed upon New England by reason of its remoteness to stimulate the long-haul business.

Generally the roads have never refused to help in the stimulation of industries everywhere. They all participate. I have even known it to happen between New York and Boston that a freight train would have a carload of bananas going in one direction and would pass a train having a carload of bananas going in the opposite direction, so that a carload of bananas are landed in New York and in the Boston market on the same day. I do not know how it is done, but it is done. . . . I should be just as much interested in the stimulating of Chicago manufacturers, in sending their products into New England to sell, as I would be in sending those from New England into Chicago to sell. It is the business of the railroads centering in Chicago to send the products from Chicago in every direction. It is our particular business in New England to send the New England products all over the country. The more they scatter the better it is for the railroads. The railroad does not discriminate against shipments because they are eastbound or westbound. We are glad to see the same things come from Chicago into New England that are manufactured and sent from New England into Chicago.¹

¹ Elkins Committee, vol. ii, p. 981.

This is of course what naturally results. The overweening desire of the large centres to enter every market is well exemplified in the Elkins Committee Hearings by testimony of the Chicago jobbers.¹

A few years later, when the railroads established the relative rates of freight between New York and Philadelphia and the Southeast, and St. Louis, Cincinnati and Chicago and the Southeast, giving the former the sales of merchandise and the latter the furnishing of food products, the hardware consumed in this country was manufactured in England. At that time we, in Chicago, felt that we were going beyond the confines of our legitimate territory when we diffidently asked the merchants in western Indiana to buy their goods in our market. Today, a very considerable percentage of the hardware used in the United States is manufactured in the Middle West, and we are profitably selling general hardware through a corps of traveling salesmen in New York, Pennsylvania and West Virginia, and special lines in New England.

What we claim is that we should not have our territory stopped at the Ohio river by any act of yours. It is not stopped, gentlemen, by any other river in America. It is not stopped by the greatest river, the Mississippi. It is not stopped by the far greater river, the Missouri. It is not stopped by the Arkansas; it is not stopped by the Rio Grande. It is not stopped even by the Columbia; and, even in the grocery business, it is not stopped by the Hudson. There are Chicago houses that are selling goods in New York city, groceries that they manufacture themselves. Mr. Sprague's own house sells goods in New York city, and Chicago is selling groceries in New England. As I say, even the Hudson river doesn't stop them.

All this record implies progressiveness, energy and ambition, on the part of both business men and traffic officers. Nothing is more remarkable in American commerce than its freedom from restraints. Elasticity and quick adaptation to the exigencies of business are peculiarities of American railroad operation. This is due to the progressiveness of our railway managers in seeking constantly to develop new territory and build up business. The strongest contrast between Europe and the United States lies in this fact. European railroads take business as they find it. Our railroads make it. Far be it from me to

¹ Elkins Committee, vol. iii, pp. 2538 and 2550.

minimize the service rendered in American progress. And yet there are reasonable limits to all good things. We ought to reckon the price which must be paid for this freedom of trade.

III

The causes of economic waste in transportation are various. Not less than six may be distinguished. These are: (1) congestion of the direct route; (2) rate cutting by the weak circuitous line; (3) pro-rating practices in division of joint through rates; (4) desire for back-loading of empty cars; (5) strategic considerations concerning interchange of traffic with connections; and (6) attempts to secure or hold shippers in contested markets. These merit consideration separately in some detail.

Congestion of traffic upon the direct line is a rare condition in our American experience. Few of our railways are overcrowded with business. Their equipment may be overtaxed, but their rails are seldom worked to the utmost. Yet the phenomenal development of trunk-line business since 1897 sometimes makes delivery so slow and uncertain that shippers prefer to patronize railways less advantageously located, even at the same rates. The congestion on the main stem of the Pennsylvania railway between Pittsburg and Philadelphia is a case in point.

Special rates or rebates often divert traffic. The weak lines (in that particular business) are persistently in the field and can secure tonnage only by means of concessions from what may be called the standard or normal rate. The differential rate is an outgrowth of this condition. The present controversy over the right of the initial line in transcontinental business to route the freight at will involves such practices. The carriers insist that they can stop the evil only by the exercise of choice in their connections. An interesting recent example is found in the Elkins Committee testimony. It appears that lumber from points in Mississippi destined for Cleveland instead of going by the proper Ohio river gateways was diverted to East St. Louis. The operation was concealed by billing it to obscure points—Jewett, Ill., near East St. Louis, and Rochester, O.—and there issuing a new bill of lading to destination.

Senator Dolliver. And these people carry it up to this little station near St. Louis and then transfer it to another station near Cleveland?

Mr. Robinson. Oh, no; to any point on the Central Traffic Association territory. In other words, it may go to Cleveland.

Senator Dolliver. Why do they bill it to Rochester?

Mr. Robinson. In order to get the benefit of keeping it in transit fifteen days without any extra cost, first.

Senator Dolliver. I do not see how that would affect the question of billing it to Rochester.

Mr. Robinson. Because that enables the wholesaler to have fifteen days extra time in which to sell the lumber.

The Chairman. Why haul it all around the country and then reduce the rate on that long haul?

Mr. Robinson. In order that roads that are not entitled naturally to this traffic may by this process get the traffic.

Senator Dolliver. What roads from Mississippi to East St. Louis?

Mr. Robinson. Any of the trunk lines—the Illinois Central, the Louisville or the Southern Railway lines. The roads in Mississippi south of the river are not parties to this arrangement, you understand. In fact, as fast as they find it out they break it up, or try to. They do not want their traffic diverted.

Senator Kean. Does it not come down to this, that some road is trying to cheat another on the use of its cars?

Mr. Robinson. Not only that, but it is trying to get traffic that does not belong to it.¹

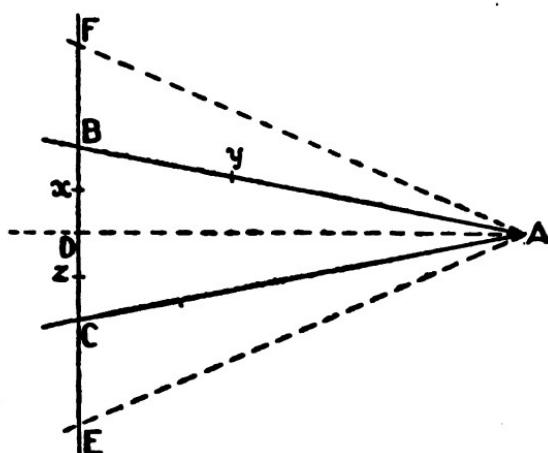
Wherever a large volume of traffic is moving by an unnatural route, the first explanation which arises therefore is that rebates or rate-cutting are taking place.*

A third cause of diversion of traffic is akin to the second; and concerns the practices in pro-rating. Much circuitous transportation is due to the existence of independent transverse lines of railway which may participate in the traffic only on condition that it move by an indirect route. This situation is best described by reference to the following diagram. Let us suppose traffic to be moving by two routes passing through points B and C, and converging on A, which last named point

¹ Testimony, vol. iii, pp. 2495 *et seq.*

* The Report of the U. S. Commissioner of Corporations on the Transportation of Petroleum, 1906, affords superb examples. *Vide*, pp. 5, 7, 14 and the map at p. 256.

might be Chicago, St. Louis, New York or any other railroad centre. Cutting these two converging lines of railway, we will suppose a transverse line passing through B and C. Obviously the proper function of this railway is as a feeder for the through lines, each being entitled to traffic up to the half-way point, D. But over and above serving as a mere branch, this road, desirous of extending its business, has a powerful incentive to extend operations. The longer the transverse haul, the greater becomes its pro-rating division of the through rate with the main line. Traffic from C is of no profit to the transverse road so long as it is hauled directly to A. But if hauled from C to the



same destination by way of B, the profit may be enhanced in two ways. In the first place the pro-rating distance is greater; and secondly, such traffic from C not being *naturally* tributary to the main line B A, but merely a surplus freight to be added to that already in hand, the main line A B is open to temptation to shrink its usual proportion of the through rate in order to secure the extra business. This same motive may on proper solicitation induce the other main line C A to accept traffic from B and its vicinity. The result is a greatly enhanced profit to the cross line and circuitous carriage of the goods in both directions around two sides of a triangle. Only recently in a case in Texas the Interstate Commerce Commission found

that two roads thus converging on a common point were each losing to the other traffic which rightfully was tributary to its own line. Our illustrative example is not a fanciful one in any degree.

This roundabout carriage becomes of course increasingly wasteful in proportion to the width of angle between the main lines converging on the common point. And several cases indicate that in extreme instances the two main lines may converge on a common point from exactly opposite directions, while the transverse or secondary road or series of roads forms a wide and roundabout detour. The well known Pittsburg-Youngstown case, cited in the original Louisville and Nashville decision in 1887, serves as illustration. The Pennsylvania was competing from Pittsburg directly east bound to New York with certain feeders of the New York Central lines which took out traffic bound for the same destination but leaving Pittsburg *west bound*.¹ Other instances of the same phenomenon occur at Chattanooga, where freight for New York may leave either northward or southward, at Kansas City and in fact at almost any important inland center.

Another extreme form may even arise in the competition between two parallel trunk lines cut transversely by two independent cross roads. One of these latter may induce traffic to desert the direct route, to cut across to the other trunk line, to move over that some distance and then to be hauled back again to a point on the first main line where it may find a "cut" rate to destination. Grain sometimes used literally to meander to the seaboard in the days of active competition between the trunk lines. Wheat from Iowa and northern Illinois finally reached Portland, Me., by way of Cincinnati in this manner, with a superfluous carriage of from 250 to 350 miles.

Starting within 90 miles of Chicago, though billed due northeast to Portland, wheat has traveled first 97 miles due southwest to avail of the connection of the Baltimore and Ohio railroad for Cincinnati, and thence north to Detroit Junction, a total of 716 miles to reach the latter point and save 5 cents in freight. The direct haul through

¹ I. C. C. Rep., vol. i, p. 32; and Industrial Commission, vol. xix, p. 442.

Chicago would have been 340 miles less, or a total of 376 miles only.¹

Another witness describes the route as follows:

Property billed for Portland, Me., started 90 miles below Chicago, although Chicago is on a direct line, and took a southeasterly course, then to Springfield, from Springfield to Flora, then to Cincinnati, and then over the Hamilton and Dayton system to Detroit, there to take the Grand Trunk road to Portland. This was owing to the billing system adhered to here with great tenacity. Property ran around three sides of a square, and I lost money on some of that property.²

This ruinous diversion of freight seems to have been dependent upon the existence of active competition at Detroit and ceased when the Grand Trunk came to an agreement with the American lines. But there can be no doubt that wherever these cross lines exist there is a strong tendency toward diversion. In the recent hearings of the Senate Committee on Interstate Commerce on railway rate regulation, a railroad witness again describes the operation:

Mr. Vining. Well, for instance, take the time when I was on the Grand Rapids and Indiana Railroad. Its connection at the south was at Fort Wayne, with the Pittsburg, Fort Wayne and Chicago road. We took lumber out of Michigan and wanted to send it east. We had to compete with lines that went by way of Detroit, that went perhaps through Canada and that in some cases were shorter. Of course, if we wanted to send lumber from Grand Rapids to New York we had to make at least as low a rate as was made by other lines leading from Grand Rapids to New York. That rate might be just the same from Fort Wayne as from Grand Rapids, so that we could not get any more than the low rate from Fort Wayne. We had to go in that case to the Pittsburg, Fort Wayne and Chicago Railway and say: "Here are so many carloads of lumber, or so much lumber, at Grand Rapids, a part of which could be shipped to New York if we had through rates that would enable us to move it. These other lines are carrying it for

¹ Statements taken before the Com. on Interstate Commerce of the U. S. Senate with respect to the Transportation Interests of the U. S. and Canada. Washington, 1890, p. 616.

² *Ibid.*, p. 631.

25 cents a hundred pounds to New York. You join us in a through rate of 25 cents and we can give you some of that business." . . . But if I were with a short line and wanted to negotiate with a long one, I should try to put my case just as strongly as possible before the long line. I should say to them : " We can not take 5 per cent of a rate of 25 cents. It would not pay us. You know that; you can see that;" and they, as business men, would admit it. " Well," I would say, " give us 5 cents a hundred pounds and we will bring the business to you, and if you do not, we can not afford to do it."

Senator Cullom. I think in some instances they have stated before us that they gave 25 per cent.

Mr. Vining. They might.¹

Whenever the cross road was financially embarrassed, the tendency to diversion was increased. For then, of course, having repudiated fixed charges, the cross line could accept almost any rate as better than the loss of the traffic. And that this was in the past almost a chronic condition in Western trunk line territory appears from the fact that eighteen out of the twenty-two roads cutting the Illinois Central between Chicago and Cairo have been in the hands of receivers since 1874.*

It not infrequently happens that the initial railroad may entirely control a roundabout route, whereas shipments by the most direct line necessitate a division of the joint rate with other companies. In such a case the initial line will naturally favor the indirect route, at the risk of economic loss to the community and even to its own shippers. An interesting illustration is afforded by a complaint of wheat growers at Ritzville in the state of Washington concerning rates to Portland, Oregon.² By direct line with low grades along the Columbia river the distance was 311 miles. This was composed of several independent but connecting links. The Northern Pacific on the other hand had a line of its own, 480 miles long, which moreover crossed two mountain ranges with heavy grades. It based its charges upon the cost of service by this roundabout and expensive line; and insisted upon its right to the traffic

¹ Elkins Committee, ii, p. 1706.

² Quoted from Acworth, 55th Cong., 1st sess., Sen. Doc. 39, p. 33.

³ Newland v. Nor. Pac. R. R. Co., I. C. C. Rep., vol. vi, p. 131.

despite the wishes of the shippers. The Commission upheld the shippers' contention for the right to have their products carried to market in the most efficient manner.¹ Another instance on the Illinois Central is suggestive, concerning shipments from Panola, Illinois, to Peoria, a distance of about forty miles by the shortest line of connecting roads. Yet the Illinois Central having a line of its own *via* Clinton and Lincoln transported goods round three sides of a rectangle, a distance of 109 miles, presumably in order to avoid a pro-rating division of the through rate.² Of course elements of operating cost enter sometimes, as in the case of back-loading;³ but in the main the pro-rating consideration rules.

Rebates may or may not be given in connection with circuitous routing. Sometimes the same result may be obtained when one carrier merely shrinks its proportion of a joint through rate, leaving the total charge to the shipper unaffected. Of course it goes without saying that an implication of improper manipulation of rates does not always follow the diversion of freight from a direct line. The rate may be the same by several competitive routes, shipments going as a reward for energy, persistency or personality of the agent. A recent case, concerning rates on lumber from Sheridan, Ind., to New York illustrates this point.⁴ Sheridan is 28 miles north of Indianapolis on the Monon road. Quoting from the decision:

In the division of joint through rates on percentages based on mileage, the defendant line naturally prefers arrangements with connections giving it the longest haul and largest percentages. Therefore it carries this freight at rates based on a carriage through Indianapolis by a direct line eastward, while in fact it carries it in an opposite direction north and west by a longer route, the reduced ton mileage being accepted to secure the traffic.

¹ Cf. the case of the C. H. & D. R. R. on p. 388, *supra*.

² Record, Illinois Railroad Commission, concerning Reasonable Maximum Rates, 1905, p. 165.

³ Cf. p. 404, *infra*.

⁴ Pratt Lumber Co. v. Chicago, Indianapolis and Louisville R. R., decided Jan. 27, 1904.

The Iowa Central, cutting across the four main lines between Chicago and Omaha, derives a large revenue from such diversion. Coal from Peoria west, instead of moving by the shortest line to Omaha, is hauled across the first three to a connection with the devious Great Western line.¹ The motive is obvious.

A fourth cause of diversion of traffic has to do rather with the operating than the traffic department. An inequality of tonnage in opposite directions may make it expedient to solicit business for the sake of a back load. The Canadian Pacific may engage in San Francisco-Omaha business by way of Winnipeg, because of the scarcity of tonnage east bound. The traffic to and from the Southeastern states is quite uneven in volume. The preponderance of bulky freight is north bound to the New England centers of cotton and other manufacture; while from the Western cities, the greater volume of traffic is south bound, consisting of agricultural staples and food stuffs. To equalize this traffic it may often be desirable to secure the most roundabout business. A disturbing element of this sort in the Southern field has always to be reckoned with. A good illustration elsewhere occurs in the well known St. Cloud case.² The Northern Pacific accepted tonnage for a most circuitous haul to Duluth, but seems to have done so largely in order to provide lading for a preponderance of "empties." In this case it did not lower the normal rate but accepted it for a much longer haul.

Not unlike the preceding cause, also, is a fifth, the desire to be in position to interchange traffic on terms of equality with powerful connections. Mr. Bowes, traffic manager of the Illinois Central, justifying the participation of this road in Chicago-San Francisco business by way of New Orleans, well stated it as follows:³

Of course the Southern Pacific Railroad, as you gentlemen know, originate and control a very large traffic, which they can deliver at various junctions; at New Orleans, where they have their long haul to

¹ Boston *Transcript*, Oct. 14, 1905.

² *Tileston Milling Co. v. Nor. Pac.*, decided Nov. 29, 1899.

³ *Elkins Committee*, vol. iv, p. 2850.

the Missouri River, and we naturally want some of that business, a long-haul traffic to New Orleans, and in giving it to them we place them under obligations to reciprocate and give us some traffic. That is one of the things that occurs to a railroad man as to increasing the volume and value of his traffic for the benefit of his company.

A sixth and final reason for diversion of traffic from the direct line may be partly sentimental, but none the less significant. It concerns the question of competition at abnormal distances. We may cite two railroad witnesses, who aptly describe the situation. "We can haul traffic in competition, and we frequently do, as I stated, at less than cost, or nearly so, in order to hold the traffic and our patrons in certain territory—Kansas City for instance—but we do not like to do it."¹ Or again "The Charleston freight is not legitimately ours. . . . We make on these through rates from Chicago to Charleston for instance scarcely anything. But it is an outpost. We must maintain that or have our territory further invaded."² In other words the circuitous or over-long distance haul is a natural though regrettable outcome of railroad competition.

IV

What are the effects of this American practice of unduly disregarding distance as a factor in transportation? Not less than five deserve separate consideration in some detail. It inordinately swells the volume of ton-mileage; it dilutes the ton-mile revenue; it produces rigidity of industrial conditions; it stimulates centralization both of population and of industry, and it is a tax upon American production.

One cannot fail to be impressed with the phenomenal growth of transportation in the United States, especially in recent years. It appears almost as if its volume increased more nearly as the square of population than in direct proportion to it. Our population from 1889 to 1903 increased slightly less than one-third. The railroad mileage grew in about the same proportion. Yet the freight service of American railroads sur-

¹ President Ramsey of the Wabash; Elkins Committee, vol. iii, p. 1971.

² Windom Committee, vol. ii, p. 796.

passed this rate of growth almost five times over. While population and mileage increased one-third, the railroads in 1903 hauled the equivalent of two and one-half times the total volume of freight traffic handled in 1889. In other words, the ton mileage—representing the number of tons of freight hauled one mile—increased from 68,700,000,000 to 173,200,000,000. Do these figures represent all that they purport to show? Every ton of freight which moves from Chicago to San Francisco over a line one thousand miles too long adds 1000 ton miles to swell a fictitious total. Every car-load of cotton goods hauled up to Chicago to be redistributed thence in the original territory and every ton of groceries or agricultural machinery exchanged between two regions with adequate facilities for production of like standard goods contribute to the same end. How large a proportion of this marvellous growth of ton mileage these economic wastes contribute can never be determined with certainty. That their aggregate is considerable cannot be questioned.

These practices must considerably dilute the returns per mile for service rendered by American carriers—in even greater degree than they enhance the apparent volume of transportation. Long-distance rates must always represent a low revenue per ton mile, owing to the fixed maximum for all distances determined by what the traffic will bear. Furniture made in North Carolina for California consumption¹ cannot be sold there in competition above a certain price. The greater the distance into which the possible margin of profit is divided, the less per mile must be the revenue left for the carrier. Yet this is not all. Such would be true of simply over-long distance carriage. But to this we must add the fact that some of this long-haul tonnage reaches its remote destination over a roundabout line, which increases the already over-long carriage by from 25 to 75 per cent. It is apparent at once that a still greater dilution of the average returns must follow as a result. From 1873 down to 1900 the long and almost uninterrupted decline of rates is an established fact. Has the volume of this economic waste increased or diminished in proportion to the total traffic through-

¹ Elkins Committee, vol. iii, p. 2008.

out this period? If it is relatively less to-day, at a time when ton mile rates are actually rising, it would be of interest to know how far such economies offset the real increases of rates which have been made. Rates might conceivably rise a little, or at all events remain constant, coincidently with a fall in ton mile revenue produced through savings of this sort.

The third result of undue disregard of distance is a certain inelasticity of industrial conditions. This may occur in either of two ways. The rise of new industries may be hindered, or a well-merited relative decline of old ones under a process of natural selection may be postponed or averted. The first of these is well set forth in the Elkins Committee hearings.¹

It is always considered desirable to have a long haul, and the rates on a long haul should be much less, in proportion to distance, than on a short haul. This is a principle of rate-making which has grown up as one of the factors in the evolution of the railroad business in this country, and it has greatly stimulated the movement of freight for long distances, has brought the great manufacturing centers in closer touch with the consumer at a distance and the producer in closer touch with centers of trade. It has been of undoubted benefit to both, though it may oftentimes retard the growth of new industries by a system of rates so preferential as to enable the manufacturer a long instance from the field of production of raw material to ship the raw material to his mills, manufacture it and return the manufactured goods cheaper than the local manufacturer could afford to make it, and thus, while building up the centers of manufacture, have retarded the growth of manufacturing in the centers where the raw material is produced.

The other aspect of industrial rigidity is manifested through the perpetuation of an industry in a district, regardless of the physical disabilities under which it is conducted. Another quotation describes it well.²

Senator Carmack. Is it the policy of the roads, wherever they find an industry established, to keep it going by advantages in the way of rates regardless of changes in economic conditions?

Mr. Tuttle. I think in so far as it is possible for them to do so. It has not been possible in all cases. We could not keep iron furnaces running in New England; they are all gone.

¹Vol. iv, p. 3115.

²Elkins Committee, vol. ii, p. 976.

One cannot for a moment doubt the advantages of such a policy as a safeguard against violent dislocating shocks to industry. It may render the transition to new and better conditions more gradual and easier to bear. It has been of inestimable value to New England, as exposed to the competition of newer manufactures in the central West. But on the other hand, it is equally true that in the long run the whole country will fare best when each industry is prosecuted in the most favored location—all conditions of marketing as well as of mere production being considered. If Pittsburg is the natural center for iron and steel production, it may not be an unmixed advantage to the country at large, however great its value to New England, to have the carriers perpetuate the barbed wire manufacture at Worcester.¹ Each particular case would have to be decided on its merits. My purpose at present is not to pass judgment on any of them but merely to call attention to the effect of such practices upon the process of industrial selection.

Centralization, or concentration of population, industry and wealth is characteristic of all progressive peoples at the present time. Great economic advantages, through division of labor and cheapened production have resulted; but on the other hand, manifold evils have followed in its train. The results are too well known to need mention in this place. From the preceding paragraph it would appear that American railroad practices operate in some ways to retard this tendency. But much may be adduced in favor of the opposite view. Many staple industries utilizing the raw material at their doors might supply the needs of their several local constituencies were it not that their rise is prevented by low long-distance rates from remote but larger centers of production. Denver, in striving to establish paper mills to utilize its own Colorado wood pulp, is threatened by the low rates from Wisconsin centers. Each locality ambitious to become self-supporting is hindered by the persistency of competition from far away cities. This is particularly true of distributive business. The overweening ambition of the great cities to monopolize the jobbing trade, regardless of distance,

¹ Specifically described in Elkins Committee, vol. ii, p. 923.

has already been discussed.¹ And it follows of course that the larger the city, the more forcibly may it press its demands upon the carriers for low rates to the most remote hamlets. The files of the Interstate Commerce Commission are stocked with examples of this kind. The plea of the smaller cities and the agricultural states—Iowa for example—for a right to a share in the distributive trade naturally tributary to them by reason of their location formed no inconsiderable element in the recent popular demand for legislation by the Federal government.

In the fifth place, every waste in transportation service is in the long run a tax upon the productivity of the country. More men may be employed, more wages paid, more capital kept in circulation; but it still remains true that the coal consumed, the extra wages paid and the rolling stock used up in the carriage of goods either unduly far or by unreasonably roundabout routes constitute an economic loss to the community. In many cases of course it may be an inevitable offset for other advantages. In the Savannah Freight Bureau Case² the facts showed Valdosta, Ga., to be 158 miles from Savannah, while it was 275 and 413 miles by the shortest and longest lines respectively from Charleston. Valdosta's main resource for fertilizer supplies, other things being equal, would naturally be Savannah, the nearer city. Yet in the year in question it appeared that nine-tenths of the supply was actually drawn from Charleston; and much of it was hauled 413 instead of a possible 158 miles. No wonder the complainants alleged "that somebody in the end must pay for that species of foolishness." Whenever the Colorado Fuel and Iron Co. succeeds in selling goods of no better grade or cheaper price in territory naturally tributary to Pittsburg, a tax is laid upon the public to that degree.³ When Chicago and New York jobbers each strive to invade the other's field, the extra revenue to the carriers may be considerable; but it is the people who ultimately pay the freight. The analogy to the bargain counter is obvious. The public are buying some-

¹ See p. 396, *supra*.

² Decided Dec. 31, 1897. I. C. R.

³ "Practically it may be declared that the public, considered as distinct from railway owners, must pay for all the transportation which it receives" . . . H. T. Newcomb in *Publ. Am. Stat. Ass.*, N. S. Nr. 34, p. 71.

thing not necessary for less than cost; while the carriers are selling it for more than it is worth. Economies would redound to the advantage of all parties concerned.

V

What remedy is possible for these economic wastes? Both the carriers and the public have an interest in their abatement. The more efficient industrial combinations have taken the matter in hand, either by strategic location of plants or, as in the case of the United States Steel Corporation, by the utilization of a Pittsburg base price scheme, with freight rates added.¹ But probably the larger proportion of tonnage is still shipped by independent and competing producers. To this traffic the railways must apply their own remedies. Either one of two plans might be of service. The right to make valid agreements for a division either of traffic or territory, if conceded to the carriers by law under proper governmental supervision, would be an effective safeguard. This would mean the repeal of the present prohibition of pooling. Or a reenactment of the Long and Short Haul clause, now emasculated by judicial interpretation, would do much toward accomplishing the same result.

Agreements between carriers previous to 1887 were often employed to obviate unnecessary waste in transportation. The division of territory between the eastern and western lines into the Southern states is a case in point. Thirty years ago competition for trade throughout the South was very keen between the great cities in the East and in the Middle West. Direct lines to the Northwest from Atlanta and Nashville opened up a new avenue of communication with ambitious cities like Chicago, St. Louis and Cincinnati. The state of Georgia constructed the Western and Atlantic railroad in 1851 for the express purpose of developing this trade. As Western manufactures developed, a keen rivalry between the routes respectively east and west of the Alleghany Mountains into the South was engendered. A profitable trade in food products by a natural, direct route from the Ohio gateways was, however, jeopardized by ruinous rates made

¹ Agreements for a scale of cross freights by wholesalers' or jobbers' associations as in Ohio for groceries or hardware are equally effective.

by the warring trunk lines to the northern seaboard. Corn, oats, wheat and pork came down the coast and into the South through the back door, so to speak, by way of Savannah and other seaports. On the other hand the eastern lines into the South were injuriously affected by the retaliatory rates on manufactured goods made by the western lines for shipments from New York and New England. Freight from each direction was being hauled round three sides of a rectangle. Finally in 1878 a reasonable remedy was found in a division of the field and an agreement to stop all absurdly circuitous long hauls into one another's natural territory. A line was drawn through the Northern states from Buffalo to Pittsburg and Wheeling; through the South from Chattanooga by Montgomery, Ala., to Pensacola. Eastern lines were to accept goods for shipment only from their side of this line to points of destination in the South also on the eastern side of the boundary. Western competitors were to do the same. The result was the recognition of natural rights of each to its territory. This agreement has now formed the basis of railway tariffs into the Southern states for almost a generation. Similar agreements, on a less extensive scale, are commonly used to great advantage. Thus in the "common point" territory formerly tributary to Wilmington, Savannah and Charleston, the first named city insisted upon its right to an equal rate with the other two, no matter how great the disparity of distance. The Southern Railway and Steamship Association arbitrated the matter, fixing a line beyond which Wilmington was to be excluded.¹ Obviously such agreements have no force in law at the present time. The only way to give effect to them is for connecting carriers to refuse to make a joint through rate. This effectually bars the traffic. Moreover entire unanimity of action is essential. Every road must be a party to the compact. Otherwise the traffic will reach its destination by shrunken rates and a more circuitous carriage even than before.

One cannot fail to be impressed in Austria and Germany with the economic advantages of an entirely unified system of operation. No devious routing is permitted. Certain lines are des-

¹ *Savannah Freight Bureau case*, decided Dec. 31, 1897, pp. 10 and 18.

ignated for the heavy through traffic, and concentration on them is effected to the exclusion of all others. Between Berlin and Bremen, for example, practically all through traffic is routed by three direct lines. No roundabout circuits occur because of the complete absence of railway competition. No independent lines have to be placated. The sole problem is to cause the tonnage to be most directly and economically transported. And this end is constantly considered in all pooling or through-traffic arrangements with the railway systems independently operated. The Prussian pooling agreements with the Bavarian railways are typical. Each party to the contract originally bound itself not to route freight over any line exceeding the shortest direct one in distance by more than twenty per cent. Compare this with some of our American examples of surplus haulage of fifty or sixty per cent! And within the last year, the renewal of these interstate governmental railway pools in Germany has provided for a reduction of excessive haulage to 10 per cent. The problem of economical operation in Austria-Hungary with its mixed governmental and private railways is more difficult. But no arrangements are permitted which result in such wastes as we have instanced under circumstances of unlimited competition in the United States.

A more consistent enforcement of the long and short haul principle might provide a remedy almost as effective as pooling. The Alabama Midland decision nullified a salutary provision of the law of 1887 by holding that railway competition at the more distant point might create such dissimilarity of circumstances as to justify a higher rate to intermediate stations. Turn to our diagram on page 399 and observe the effect. Traffic around two sides of a triangle from A to C by way of B is carried at a rate equal to the charge for the direct haul from A to C; or it may be even at a lower differential rate. Complaint arises from the intermediate points y and x of relatively unreasonable charges. The roundabout route replies with the usual argument about a small contribution toward fixed charges from the long haul tonnage, which lessens the burden upon the intermediate rate. This is cogent enough up to a certain point. It might justify a lower rate to D, on the natural

division line of territory. It might be defensible on principle to accord D a lower rate than x or possibly even than y. To deny the validity of lower rates to z or C would however at once follow from the same premises.

Suppose a long and short haul clause to be reënacted, exemption from its provisions to be granted only by the Interstate Commerce Commission, what would be the result? This body roughly determining the location of D, a natural division point, would then refuse to permit A B, B C to charge less to either z or C than to any intermediate point x B or y. Coincidentally it would bar the other road A C, C B from any lower through rate to points beyond D, such as x, B or y than to any intermediate station. Two courses would be open to the roads. They must either mutually withdraw from all business beyond D or reduce their rates to all intermediate points correspondingly. In a sparsely settled region with little local business, they might conceivably choose the latter expedient. But in the vast majority of cases the roads would prefer to withdraw from the unreasonably distant fields.¹ Simultaneously taken by each line such action would put an end to the economic waste. At the same time it would terminate one of the most persistent causes of rebates and personal favoritism. To be sure it would generally operate in favor of the strong, direct lines as against the weak and roundabout ones. Great benefit would accrue to the Pennsylvania, the Illinois Central or the Union Pacific railroads. The activities of the parasitic roads and the scope of parasitic operations by the substantial roads would inevitably be curtailed. Much justice would be done and much local irritation and popular discontent would be allayed.

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¹ This problem is involved in the Youngstown-Pittsburg case already mentioned. In the original Louisville and Nashville decision the Commission apparently preferred to encourage competition even at the risk of its being roundabout and "illegitimate." But after the railway attorneys expanded the "rare and peculiar" cases to cover all kinds of competition, the Commission apparently regretted its earlier position. Cf. Interstate Commerce Commission Reports, vol. i, p. 82, and vol. v, p. 389; and especially the brief of Ed. Baxter, Esq., in the Alabama Midland case, U. S. Supreme Court, Oct. term, 1896, no. 563, p. 118.

THE EIGHT HOUR AND PREVAILING RATE MOVEMENT IN NEW YORK STATE¹

I

THE history of the eight hour and prevailing rate movement in New York state extends back almost to the middle of the last century. Its beginnings are obscured in the imperfect records of early labor union activity. The first accounts of labor meetings contain references to shorter hours of labor and the subject reappears over and over again in their later records.

In the early fall of 1867 a convention of the National Labor Union was held in New York city. Delegates were present from ten eastern and central states. They are reported to have devoted their time to discussing questions of wages and of strikes. New York was officially represented in this convention and its delegates took a leading part in the discussions. In 1869 a report records the existence of thirty-nine "protective or trade unions" of considerable strength in New York city, while "only a few years ago" the only unions of importance were the Typographical Union and the unions of bricklayers and plasterers. To emphasize the value of efficient organization the report shows that the plasterers worked forty-eight hours a week at \$4.50 a day, while bakers, who were not organized, worked 120 hours a week for \$5.00 a week. In 1870 the number of organizations was reported to be 350, many of them in a flourishing condition. Mass meetings were frequently held at Cooper Institute and in other halls to promote organization and to agitate the questions of wages and of hours of labor. These meetings were reported in some of the papers of the period as "large and enthusiastic" and as devoted to agitating for an increase of wages and a shortening of the hours of labor. Other contemporary accounts declare that, while they were

¹The writer of this article takes pleasure in acknowledging financial assistance received from the Carnegie Institute to aid him in the preparation of this article.

reported with enthusiasm, they were in fact "regular stated meetings of the organizations," and that the agitation was "more apparent than real." A reporter for one paper refers to instances in his own experience. One was a meeting of shoemakers where the attendance was fourteen, and another was a meeting of horseshoers where half an hour after the time advertised for the opening there were nine men in a hall that would seat fifty. Such experiences may have been exceptional, or the reports may have been exaggerated. But whether we take the word of sympathizers or of critics of these early organizations, it is clear that wages and hours of labor were the principal subjects of discussion.

The New York State Workingmen's Assembly was organized in 1865. From its inception its main object has been to secure legislation favorable to the interests of its members. From the outset a special committee has been maintained whose duty it has been to be present at Albany during the sessions of the legislature, to take charge of all bills in which the organization was interested and to exert such influence as it could to secure the enactment of such bills into law. The Workingmen's Assembly has thus been an important factor in shaping the labor legislation of the state. In the very first of their legislative programs appears the demand for an eight-hour day. Soon was added the demand for payment of wages at the prevailing rate, and these two demands have been repeated in every program since.

The first effort to regulate wages in the state appears as early as 1777. In that year a law was passed styled "An act to regulate wages of mechanics and laborers, the prices of goods and commodities and the charges of inn-holders, within this state, and for other purposes therein mentioned." The circumstances connected with the passage of this act were briefly these. A resolution had been passed by the Congress of the United States in accordance with which a convention of New England and middle states met and resolved to regulate "the whole matter" referred to in the title of the act. It was the desire to carry into effect the resolution of the convention that led to the passage of this law. On the ground that the other states repre-

sented in the convention did not enact and enforce similar laws, New York repealed its statute at the next legislative session. This law not only determined the rate of wages but also fixed the prices of a long list of staple commodities. This first effort to regulate wages belongs properly to a former period, of which it stands as a relic. It is an American example of the legislation dating from the days of Elizabeth which was still nominally in force in England at the time of the American Revolution.

The present movement really begins with a statute passed in 1867 which regulated the hours of labor in the following terms: "Eight hours of labor, between the rising and setting of the sun, shall be deemed and held to be a legal day's work, in all cases of labor and service by the day, where there is no contract or agreement to the contrary," but "farm or agricultural labor or service by the year, month or week" was exempted. No person, however, was to be "prevented by anything herein contained from working as many hours over time or extra work, as he or she may see fit, the compensation to be agreed upon between the employer and the employee."

In the later sixties the papers record a large number of strikes in different trades for the purpose of securing the enforcement of the eight-hour law. These strikes, according to a reported statement of one of the early officers, were as a rule not successful. In 1868 the Workingmen's Assembly passed a resolution calling for the repeal of the special contract clause of the law. This demand was complied with by the legislature in 1870. The law then read:

Eight hours shall constitute a legal day's work for all classes of mechanics, workingmen and laborers, excepting those engaged in farm and domestic labor; but overwork for an extra compensation by agreement between employer and employee is hereby permitted. . . . This act shall apply to all mechanics, workingmen and laborers now or hereafter employed by the state or any municipal corporation therein, through its agents or officers, or in the employ of persons contracting with the state or such corporation for performance of public work.

While the law was made more definite so far as the eight-

hour limit was concerned, it was to be applied only in cases where work was done by or for the state or a municipal corporation. And even here "overwork" by agreement was permitted. The gain in clearness of definition was thus secured at the expense of breadth of application. Yet it was regarded as a substantial gain by the organizations, for it seemed now as though it would be possible to enforce its provisions. Despite all efforts to secure further change the law remained unmodified for twenty-four years. During this time there were, however, repeated calls for amendment in order to provide for enforcement. In 1894 another clause was added in the following terms:

All such mechanics, workingmen and laborers so employed shall receive not less than the prevailing rate of wages in the respective trades or callings in which such mechanics, workingmen or laborers are employed in said locality. And in all such employment, none but citizens of the United States shall be employed by the state or any municipal corporation thereof, and every contract hereafter made by the state or any municipal corporation for the performance of public work must comply with the requirements of this section.

Five years later an amendment was passed requiring contractors to stipulate in all public contracts that labor shall be performed in accordance with the eight-hour and prevailing rate provision of the law.¹ The particulars of the contract are so fully stated that twelve lines of the original law are expanded in the new law to thirty-seven. It was also made a penal offence to employ laborers except in accordance with the provisions of this law.

The law requiring the payment of wages at the prevailing rate was the final fruit of earlier and more special legislation. In 1888 a bill, known as the Locktenders' bill, was introduced by the representatives of organized labor. It provided for a fixed rate of wages of two dollars a day for the tenders of canal locks. The bill was not passed. After several conferences

¹Exceptions were made in the following year in cases of "persons regularly employed in state institutions" and of "engineers, electricians and elevator men in the department of public buildings during the annual session of the legislature."

between the legislators and the labor representatives, the latter decided to urge a bill the provisions of which should be extended so as to include all the employees of the state. This revised bill was pushed more vigorously than the former one. In the annual convention of the Workingmen's Assembly the bill was endorsed by resolution and the legislative committee was instructed to use its influence. At the session of 1889 the bill, known as the "Two Dollar a Day bill," was declared by the labor organizations to be "the principal labor bill before the legislature." Mass meetings were held in several large cities and resolutions endorsing the measure were sent to the committee. The committees of both houses and the governor held largely attended hearings on the bill. As a consequence of the agitation it finally became a law. Two years before this a resolution had been adopted by the labor organizations urging a clause in a law forbidding the employment of laborers other than citizens and requiring the prevailing rate of wages. The part giving preference to citizens was incorporated in the bill just referred to. As passed, it provided that wages for day laborers employed by the state should not be less than two dollars a day and "in all cases where laborers are employed on any public work in this state, preference shall be given to citizens of the state of New York." At the session of the legislature in the following year, the section of the law requiring the two dollar a day wage was repealed, leaving in force only the provision in regard to citizenship. The labor leaders attributed the repeal of the act to the influence of "farmers and corporations." They still persisted in their efforts. Their next move was a resolution calling for the substitution of the "day work system" at the prevailing rate of wages for the private contract system in all public work. This they finally succeeded in securing, after bringing various influences to bear on the members of the legislature. The regulation for the payment of wages was revived in 1894 in a somewhat different form, and since that time the law has remained on the statute books until by the decision of the court it was declared void.

In the codification of the labor law, in 1897, both matters were dealt with in the same section. Eight hours were declared to

constitute a legal day's work for all classes of employees except farmers and domestic servants, "unless otherwise provided by law." An agreement would be legal for overwork at an increased compensation except upon work by or for the state or a municipal corporation or by contractors or sub-contractors therewith. Each contract must contain the stipulation that no laborer "shall be permitted or required to work more than eight hours in any one calendar day;" and that wages to be paid for such a day's labor upon public work "or upon any material to be used upon or in connection therewith" must be not less than the rate prevailing in the locality. If these stipulations did not appear in a contract, the contract was to be void. No public official was to pay any money for work done under such a contract, and a violation of this clause was a penal offence.

II

This formulation of the law was the result of continued agitation and persistent effort on the part of the labor organizations of the state. The law in its early form was ineffective, as there was no means provided for enforcement and as the generality of its provisions made it practically meaningless. The codification of the law in 1897, with its definite statement of the provisions, presented the issue in such a way that it could no longer be evaded. The labor interests had the contractors at bay. The law carried a penalty and any one could concern himself in seeing that the penalty was enforced. The commissioner of labor reported in 1900 that there were numerous complaints of violation of this provision of the law. The complaints were investigated and many of the cases turned over to the local district attorneys for prosecution. The results of these prosecutions were not uniform. Some led to success, others to failure. Roads were being made, reservoirs built, streets paved, sewers constructed and other public improvements carried to completion, and the eight hour and prevailing rate provision was not complied with. The law was clear enough. It now remained for the courts to pass upon it; not as to its meaning, but as to its constitutionality. The struggle, therefore, was shifted to the courts.

A case arose involving payment for overwork done between 1892 and 1894 by the drivers of the street cleaning department in New York city. The case was decided under the old law in favor of the workmen. The law permitted overwork for extra compensation by agreement. The overtime in this case had been done by direction of the head of the department. The city's defense was that no express agreement for extra compensation had been made at the time of employment. The drivers claimed that an agreement was implied. The court interpreted the agreement as an implied contract and binding. The Court of Appeals sustained this decision. As a result 797 drivers were awarded back pay amounting to \$1,336,000 for extra work over eight hours. In 1899 a case arose under the new law. A laborer anxious for work was employed on the construction of recreation piers in New York city at \$2.25 a day. After working for several months at that rate, he was informed that the union rate for his work was \$3.50 a day. He brought suit for the difference in wages and for overtime, a total of \$170.50, and was awarded the amount with costs. A case in 1900 brought from the court a statement of the intent and purpose of the law as follows:

The policy of the law is that laborers . . . employed upon public work shall receive the prevailing rate of wages . . . That policy is just as important with respect to men who are employed by a city . . . The intent is to insure . . . the same amount of wages which it has been found necessary to pay to secure the services of other men at the same sort of work . . . in the same locality.

The provision concerning the prevailing rate was the first to come to a final issue before the Court of Appeals. The substance of the decision may be concisely stated as follows. First, the whole contention must be in regard to the validity of the law. If valid, its insertion in a contract is not necessary, since all contracts are assumed to be made subject to the limitations of existing laws. If not valid, its insertion in a contract does not make it valid. Second, a municipal officer directing a local improvement is not an agent of the state, but of the city alone; and the state legislature cannot limit the right of self-govern-

ment of a city by interfering in its contracts, since this right is protected by constitutional guarantee. Third, public expenditures can be for city purposes only and the legislature cannot require a city to frame its contracts in the interests of individuals or classes. Where that is done, it amounts to depriving a citizen of property without due process of law. The dissenting opinion differed mainly on the question of the relation of the city to the state. It affirmed the right of the state, as a proprietor, to prescribe the conditions of contracts into which its agents may enter; and furthermore asserted that a municipal corporation is, so far as its purely municipal relations are concerned, simply an agent of the state for conducting the affairs of the government.¹ The result of the decision was to annull that part of the law which required payment of wages at the prevailing rate for municipal improvements made for the city by contractors.²

These decisions left the eight-hour clause technically undecided. Yet a strong suspicion of its unconstitutionality prevailed. The reason for failure in bringing many contractors to trial was the difficulty in securing a true bill from a grand jury. The theory underlying the two clauses was the same, they insisted, and if one clause was unconstitutional the other must be. Upon request from the grand jury for instructions upon the point the court replied: "That law, I think, when the test comes, will be declared unconstitutional . . . and if such a case comes before you I would advise you to refuse to indict because any indictment here brought would be set aside by this court." Such was the feeling before the matter was brought to final issue, and because of it several indictments were dismissed.

A beginning was made in the contention over the eight-hour clause in an effort to stop the payment of bills due the Municipi-

¹ An extended account of this case may be found in the *Bulletin of the Department of Labor*, N. Y., Mar., 1901, pp. 45-61. *People ex rel. Rodgers v. Coler*, 166 N. Y., 1.

² A previous case (*Clarke v. State of New York*, 142 N. Y., 101) had affirmed the law so far as work done for the state was concerned. In 1904 it was held (*Ryan v. City of N. Y.*, 177 N. Y. Rep., 271) that the law was constitutional when applied to workingmen in the direct employment of the city.

pal Gas Company of Albany for gas used in public buildings, on the ground that the gas was made by workmen who worked more than eight hours. The attorney general gave an opinion to the effect that the law was valid. The company appealed to the courts. The decision of the latter was in favor of the gas company on the ground that the law applied to public work which meant virtually construction work. The supplying of gas and electricity cannot be construed as in any sense a contract involving "labor" on "public work." Gas and electricity, incandescent and carbon lamps, declared the court, are marketable commodities, articles of common merchandise, just as are brick or stone. In 1903 the Court of Appeals held unconstitutional the section of the penal code which affixed a penalty for violating the provision of the labor law.¹ Thus one of the most efficient means for enforcing the law was removed. Yet the attorney general gave it as his opinion that the decision did not affect in any way the validity of the labor law itself. The question finally came before the Court of Appeals and was decided squarely on its merits. The principle of the Rodgers case was applied and the eight-hour section declared unconstitutional. It was thought by many that the law might be upheld; for the personnel of the court had changed since the former decision, and the United States Supreme Court had in the meantime upheld the Kansas eight-hour law. Yet the precedent in the former case was followed. In substance the decision set forth the same principle as in the Rodgers case, declaring that the law and constitution of New York assure the municipality a certain degree of independence and this independence may not be infringed by the legislature. Two justices dissented on the ground that there were important distinctions between the two requirements and that the requirement in question was sound, being a valid exercise of the police power in the interest of the public welfare. As in the Rodgers case, the decision applied only to contractors doing work for municipal corporations.² This decision was supported by five of the seven justices. Yet

¹ *People v. Orange County Road Construction Company*, 175 N. Y. Rep., 84.

² *People ex rel. Coasey v. Grout*.

they came to the conclusion by different courses of reasoning, some holding that the rights of municipal corporations were invaded; others that the property of the contractor was confiscated.

III

After the change made in 1870, the statute that remained in force applied only to laborers on public work. Yet many trades were desirous of invoking the law to restrict hours of labor. This effort, however, did not take the form of a general movement. Several trades, well organized and anxious for further advantages, engaged in separate endeavors to secure laws favorable to themselves. The several laws secured in this way constitute a considerable portion of the labor law of the state. Among the special trades that have at various times received consideration at the hands of the legislature are plumbers, railway employees, brick makers, stone cutters, bakers, barbers, horseshoers, engineers and drug clerks. As a rule the laws passed have been in the direction of restricting the number of hours of work in these trades, and in some cases provision has been made for licensing the workmen or granting certificates after an examination by a specially constituted board. The bakers' law provided for inspection of bake shops, in addition to limiting the number of hours of work. The laws in some cases were passed only after ten years of most persistent effort. This was true especially in the case of the law applying to railway employees and to stone cutters. Seldom did the laws enacted include all that was desired. The stone cutters' law, for instance, provided that all stone for state or municipal works should be cut within the state and, when possible, on the grounds where the construction work was being done. This law was passed in 1894. In 1898 the New York Central Railroad was engaged in the construction of a depot at Albany. The Workingmen's Federation backed a bill requiring all stone for that building to be cut in Albany, by union labor and at the union schedule of wages and hours. Although pushed with vigor the bill was not passed.

The attitude of the courts toward this line of legislation, as

indicated by recent decisions, has tended to check the zeal with which the bills have been urged. In 1904 the law pertaining to horseshoers was held to be unconstitutional. As a type of some of the special trade legislation of the state, it may be explained somewhat in detail. The law required that all journeymen or master horseshoers should be examined by a state board. This board consisted of one veterinarian, two master horseshoers and two journeymen horseshoers, all to be citizens of the state and residents of the cities of the state, to be appointed by the governor for a term of five years. A person was qualified to take the examination provided he had served an apprenticeship for at least three years. The board then was empowered, if the candidate passed the examination, to issue a certificate which served as evidence of fitness. This certificate was then to be registered in the office of the clerk of the county in which the applicant intended to ply his trade. A fee of five dollars was to be paid at the time of the application for the examination and a fee of twenty-five cents on filing the certificate in the county clerk's office. This law was annulled by the unanimous vote of the appellate division of the Supreme Court. Two arguments were advanced in favor of the law. One held that the regulation of the trade was properly a matter for state supervision and came within the police power; the other, that the law was in support of the effort to prevent cruelty to animals. The decision did not recognize the validity of either argument.

It does not seem that this regulation tends to promote the public weal along any of the lines upon which the exercise of the police power in various cases which have arisen has been made to rest. * * * It is difficult indeed to see how the regulation of shoeing horses has any tendency to promote the health, comfort, safety and welfare of society.

Touching cruelty to animals, the court said: "Laws prohibiting cruelty to animals and providing in considerable detail for the exercise of power necessary to secure that result have found a place upon the statute books and been enforced by the courts for many years, and numerous convictions have been had under such statutes."

The plumbers have fared better at the hands of the courts than have the horseshoers. Their law provided for a board of examiners from whom certificates must be secured. The board was to work in coöperation with boards of health and with engineers of sewers. The main points of this law have been upheld by the Court of Appeals.

The bake shop law has recently attracted the greatest amount of attention. This law provided for inspection of bake shops and made regulations intended to improve sanitary conditions. It also provided that no employee should be "required or permitted" to work more than ten hours a day. From the outset the fight to secure these regulations was a determined one on both sides. The commissioner of labor earnestly recommended it. Both state and national labor organizations used all their influence in support of it. Finally, in 1895, the law was passed. It was the first state law of its kind and attracted attention as "pioneer legislation." The law almost immediately became the subject of litigation. The clause upon which the legal battle centered was that which declared that an employer should neither require nor permit an employee to work longer than ten hours a day. From one court to another in the state system the case was carried, and the decisions were in support of the provision of the law on the ground that it was a proper exercise of the police power. When finally the Court of Appeals sustained the decision of the lower courts, the issue was looked upon as closed. But an appeal was taken to the United States Supreme Court on the ground that there was an interference with the liberties granted to citizens of the United States by the fourteenth amendment. It will be noticed that in framing the law an effort was made to prevent overtime work performed in accordance with special agreements. The opportunity afforded for overtime work by special agreement between employer and employee had been the loop hole in many of the former laws. The employer could nearly always succeed in inducing his employees to work overtime. To make such an arrangement impossible, an employer was not only not to require overtime work but he was not to permit it. By a vote of five to four the judges of the Supreme Court of the United States decided that

this provision was an infringement on the right of a citizen to contract for any length of day that seemed to him best, and that such infringement was not of sufficient importance to bring it within the police power of the state. This appears in the words of the decision as follows:

Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exercise of the police power and upon the subject of the health of the individual whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employee if the hours of labor are not curtailed. If this be not clearly the case, the individuals whose rights are thus made the subject of legislative interference are under the protection of the federal constitution regarding their liberty of contract as well as of person; and the legislature of the state has no power to limit their right as proposed in the statute.

In the matter of providing for clean and healthful conditions of labor, it was the opinion of the court that the provisions made for inspection were quite sufficient.

Looking at this decision from the view-point of existing conditions rather than legal theory, workmen reason about it as follows: When applying for work a workman is informed that the work day is more than ten hours. If he insists that ten hours is all he can work he is informed that there is no place for him. If he is already employed and insists on cutting his time down to ten hours, he is informed that his services are no longer needed. Thus he finds himself helpless when he endeavors by individual action to secure a ten-hour day. By uniting their efforts workmen invoke the aid of the law to deprive the employer of the advantage he has in consequence of the large supply of labor. To secure just what they all want, namely the ability to resist the employer in his effort to maintain a longer work day, they induce the legislature to enjoin the employer from permitting his workmen to labor more than ten hours. This was the legal phraseology by which the employer was to be deprived of the ability to "induce" his workmen to

favor a longer day. The state courts appreciated the practical features of the situation. But the federal court seems to the workmen of the state to have brushed these practical considerations aside, to have listened only to the arguments of the employers and to have been convinced that the employee was suffering a grievous wrong in being deprived of his constitutional right of freedom of contract. Thus they feel that in sustaining them in their abstract right, the court has actually deprived them of the power to secure what they really most desire. Had they themselves appealed to the court, the court might reasonably have held that their rights were in danger of infringement. But they did not make the appeal, they were satisfied and had no feeling that their rights were invaded by the law. They consequently conclude that the court has failed to give fair consideration to the practical exigencies of the situation. They were, therefore, both surprised and chagrined at the outcome of the appeal.¹

While these various efforts have been made to restrict by law the number of hours that shall constitute a day's work, the leaders of the movement have been making every effort to accomplish the same result by inducing all laborers to refuse to work longer than eight hours. This has proved to be rather a difficult task. It is a comparatively easy matter to induce an organization at its regular meeting to adopt resolutions against a longer day and to enjoin its members from working longer than the prescribed time. Yet to hold the individual members to the agreement after the meeting has adjourned is a task usually beyond the powers of the labor leaders. The seriousness of the matter, in the minds of the leaders, may be inferred from the following statement, in the form of a resolution adopted by the American Federation of Labor:

We advise strongly against the practice which now exists in some industries of working overtime, beyond the established hours of labor.

¹ The New York State *Bulletin* has pointed out in connection with the decisions on the law by the various courts that twenty-two judges have voted at one time or another on this case, and that twelve of these have cast their votes in favor of the validity of the law.

. . . It is an instigator to the basest selfishness, a radical violation of union principles, and . . . it tends to set back the general movement for an eight-hour day.

The eight-hour day is one of the most important articles in the creed of organized labor. No opportunity for applying it either in a locality or in a special trade is ever lost. As one reads the reports of conventions, the addresses of leaders and the articles in the labor press, it becomes obvious that the policy will be pushed to the end, by trade agreements when possible, by legislation when practicable and by strikes when necessary.

IV

The agitation for the eight-hour day in special trades was for the time completely discouraged by the decision of the court in regard to the law dealing with contract labor on public work. With such a decision on record no progress could be made. The only way out of the difficulty was to change the fundamental law of the state in such a way as to overcome the objections of the court against the law. The machinery of the state organizations was accordingly at once set in operation to accomplish this result. Other important measures were for the time laid aside. All organizations were interested. The state federation became the champion of the cause, and all its various departments were set in operation. Resolutions were adopted. Legislators were interviewed. Local organizations sent resolutions to their respective representatives at Albany. Finally the resolution for amendment of the constitution was adopted. As the prescribed process of amendment of the state constitution requires that a resolution shall pass the legislature twice before it may be submitted to popular vote, the first vote of the legislature adopting the resolution was only a beginning. The men immediately interested kept busily at work in the interval. When the time for the second legislative action came, they were on hand. The second vote was favorable, and at the last general election the matter was submitted to the voters of the state. As voting on amendments goes in the state, the advocates of the measure had everything in their favor. While the vote on the amendment fell far short of that cast for the candidates, yet

the amendment was adopted by the safe margin of two to one of the votes cast,¹ and is now a part of the constitution of the state. The amendment is inserted in that part of the constitution which confers upon the legislature the power to provide for the organization of cities. It adds to the other powers of the legislature in the matter the following:

. . . and the legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state or for any county, city, town, village or other civil division thereof.

Such a provision seems to overcome all the objections of the courts. The amendment was evidently attached to the clause regulating the relations of cities to the state in order to overcome the objection that the law was an infringement upon the rights of local self-government. Whether the amendment will stand the test of scrutiny by the federal Supreme Court in the light of the fourteenth amendment is, of course, a question that cannot be answered. It is certainly not beyond the bounds of possibility that a case may be referred to that court for a decision, since an important part of the reasoning by which the state court annulled the law rested on the proposition that the law was not only an infringement of the rights of cities but that it was also an infringement of the individual right of the contractor, and that it was legislation in favor of a class.

As soon as the last session of the state legislature opened bills were brought forward to meet the requirement, of the new situation. After many amendments and much discussion the old law, so far as it had been repealed, was reenacted. Some attempts were made to obviate the defects which practice had revealed in the previous measure. They were abandoned, however, when confusion threatened to delay the bill, and no important amendments were made. Some dissatisfaction has arisen among labor leaders since the law was passed because, as they say, it is not properly enforced. It seems to have been

¹ The entire vote on the amendment fell a little short of 500,000.

overlooked by them that contracts made in the old régime must hold during the period for which they were drawn. No one can, therefore, undertake to pass judgment on the new law until it has had a fair trial.

V

The movement which has culminated in the amendment of the constitution of the state is seen from the preceding sketch to have advanced by a series of distinct stages. Each new change has been made because of legal difficulties which have been suggested by experience. In its first form the law was of no practical use. It reads as if a bit of the spirit of the seventeenth century had invaded the legislative halls of the nineteenth and induced the legislators to believe that a statement could have binding force when it carried no penalty for its enforcement, but instead a clause opening the way for evasion. More practically, it may be assumed that the agitators looked upon the enactment as a first gain, of no importance in itself but of considerable importance as a beginning, and that the legislators considered it a harmless concession to a very active and determined group of electors.

Any further limitation on the rights of employers and employees to determine for themselves the length of the working day and the compensation therefor could of course be made to apply most easily to those who work for the state or a municipality or on public work being done by contractors. This provision of the law being added, the hope doubtless was that with the state as a model employer setting the example of an eight-hour day other employers could the more easily be induced to follow. Apparently the leaders of the movement were surprised to find that the law was not enforced, that it needed a sting in order to inspire respect. Renewed agitation secured the sting in the form of an amendment to the penal code making it a crime to fail to comply with the form of contract described. Then there was no more evasion. The matter was brought to an open issue in the courts.

The decisions of the courts have revealed only one important difference between the prevailing and dissenting opinions. This

difference touches the relation of the city to the state. There seemed to be no thought of compelling all employers to adopt an eight-hour day with the prevailing rate of wages. On the other hand it was early and positively decided that the state could prescribe any conditions it deemed best in regard to work done for the state. This is a matter of expediency in reference to which the decision rests entirely in the hands of the legislature. But could the state compel a city to have its work done after a certain prescribed manner, and further, could it dictate a contract to be adopted by the city and its contractors? That was the point in contention before the courts. The prevailing decision declared that by virtue of the constitutional relation established between the state and the cities thereof, a city was more than an agent of the state. It had powers and rights which were not subject to the control of the state legislature. The rights of a city to contract for its public improvements after any manner that seems best to its officials is included in the rights that lie beyond the control of the state legislature. Yet the dissenting opinion held with strong logic that the city was in all respects an agent of the state government. Its charter emanated from the legislature. It had no powers beyond its charter. Therefore it had no powers not granted by and consequently not revocable or limitable or modifiable by the legislature. Such being the relation, the legislature clearly had a right to prescribe the conditions of contract.

Here was a fine point of law. Moreover, much of the decision was *obiter*, and a change in the personnel of the court or a technicality of procedure might reverse the substance of the decision. The matter would, consequently, be always in doubt. An amendment to the constitution appeared to be the only way in which the question might be finally settled.

While the principal question discussed in the leading cases was that of the relation of cities to the state, the economic phase was not entirely overlooked. In one of the decisions a justice dissented for the reason, in part, that "prevailing rate" is an indefinite term and therefore unsatisfactory in the law. Others saw in the provision that if a contractor paid more for labor than was "necessary," it was in substance an appropria-

tion of public funds for the benefit of a class. It was also an interference with free competition. These prove upon careful examination to be hasty conclusions. It is true that fair and open competition is the most satisfactory means of adjusting wages and that wages so adjusted will in the end be most nearly equitable, from an economic as well as from a general social point of view. Now what is the "prevailing wage?" It is a wage rate that has been established by competition: competition between organized capital on the one side and organized labor on the other. It may be true that one side or the other has had some temporary advantage and has succeeded in affecting wages accordingly. But in what does the wage rate consist when *not* the "prevailing" wage? In that case it is an adjustment between organized capital on the one hand and unorganized labor on the other. In such competition there can generally be nothing fair and open. The advantage of one side is too great. The prevailing rate is probably the nearest practical approach attainable in our present industrial organization to a rate fixed by fair and open competition. The state can never enter into a competition that will not be one-sided. It therefore will do best to accept the result of competition that has been working in circumstances that are most nearly fair. What is true of the prevailing wage is also true in the adjustment of hours.

There will still stand against this method of adjustment the objections that are so often raised against any particular application of a union scale of wages. The laborers all receive the same pay while all are not equal in skill, strength or endurance. Each man ought to be paid for the work he does, and not in accordance with a scale which he does not fit. The best workmen are not encouraged to do their best and indolent workmen are carried along by their fellows. It should be the privilege of each man employing labor to bargain with each individual laborer. Such claims have undoubtedly much force, and they serve as an indictment from which the organized upholders of a wage scale will have some difficulty in securing a verdict of not guilty. Yet this difference of opinion as to the advantages and disadvantages of an established union wage scale is one to be

adjusted by experiment and observation in the industrial world. In the meantime, work for the state and city must continue and wages must be paid. The law as expressed by the amendment recognized that organization among employers is an accomplished fact, and that such organization gives the employer a decided advantage in "higgling" for wages. It decrees that wherever organizations of labor and organized employers have reached a satisfactory working scale of wages, such scale shall be adopted in cases of work done for city or state. It is the most practical working arrangement feasible in our industrial world as at present organized.

Those who have been concerned in a practical way with the working out of this problem have been confronted with a difficult task. There is the economic side, with the attempt to adjust wages in such a way that those performing the labor shall be treated fairly; that those for whom the labor is performed shall not be unjustly treated, especially in the case of contract work; and that public funds shall be expended with the same care as would be exercised in private enterprises. While these points are to be observed, at the same time the economic principles which fundamentally control the fixing of wages must not be violated. In addition to this, there is also the constitutional side of the problem. Here arises the delicate matter of adjustment between the authority of the legislature from which all charters for municipal corporations emanate; the principles of local self-government; and the general principles of the common law either expressed or implied in the federal constitution—as well as in the state constitution—which overlooks the relation between cities and states but which takes all citizens under its protection. To accomplish this task in a practical way is the purpose of the amendment. Whether it conforms to all the principles of law will be a matter for the judiciary to decide. Whether it conforms to all the principles of economic and social science can only be determined by experience.

GEORGE GORHAM GROAT.

NEW YORK CITY.

MUNICIPAL CODES IN THE MIDDLE WEST.

IN every country the organization and power of municipal corporations have at first been regulated by special laws or charters for each community. But in the course of time the tendency has been to establish a general and more or less uniform system within each organized government. Thus in ancient history the early self-constituted city governments in the Italian peninsula were reorganized after the extension of the Roman dominion, about the time of Sulla; and the main features of this municipal system were later extended throughout the Roman Empire. After the breakdown of that empire special charters again appeared throughout western Europe. But since the end of the eighteenth century these have been replaced in practically all the European countries by general municipal codes. France led the way in this movement, at the time of the Revolution. Prussia followed this example in 1808 and England in 1835. Other countries have one after another adopted the same method of procedure.

Special charters and special acts of the legislatures were the only methods of organizing municipal government in the United States until the middle of the nineteenth century. In 1851 the second constitution of the state of Ohio began the attempt to secure general laws by prohibiting special legislation. Other states adopted similar provisions in their constitutions, at first slowly, but more rapidly since 1870. And now most of the states attempt in one way or another to prohibit or restrict special legislation on municipal government. A few, however, such as Massachusetts and Michigan have no constitutional restrictions; and special charters are still openly and freely enacted.

But even in most of the states where special legislation is prohibited, there have been no comprehensive systems of municipal organization established. By the device of classification, laws general in form have been enacted, which in fact applied only

to single cities. Until within a few years such laws have been generally accepted as complying with the constitutional provisions. As a result, there is nothing approaching uniformity or system in the government of cities in most of the states. And for the country as a whole the diversities have been so numerous and so far-reaching that any attempt to describe the typical American municipal organization has been impossible.

A few states, however, are now exceptions to this rule. Three of these are the neighboring states of Illinois, Ohio and Indiana, forming a compact group in the central part of the country. The Illinois law was enacted in 1872, and was probably the first effective municipal code in the United States. Ohio and Indiana have also had nominal codes for a long time; but the schemes of classification were so highly developed as to prevent any general system of organization. But within a few years both of these states have enacted new municipal codes establishing a general plan. This recent legislation suggests a comparative study of the codes of the three states. While these states agree in the method of dealing with the problem, and while the systems adopted have some features in common, illustrating present tendencies throughout the United States, there are also many and wide divergencies which show the absence of any consensus of opinion on this question among American legislators.

Illinois

The Illinois Cities and Villages Act is said to have been drafted by the late Judge M. F. Tuley, of Chicago. At the time of its enactment it was undoubtedly the best and most successful measure on the subject of municipal government that had been adopted in the United States. It has been amended from time to time, but its main features have been unaltered. And while it has proven inadequate to meet some of the conditions that have since developed, it still contains much that is worthy of study by the legislators of other states.

A comparatively simple and elastic plan of municipal organization is provided by this act. In every city there must be elected a city council, a mayor, a city clerk, a city attorney and

a city treasurer. Other officers may be created by the city council as needed.

Members of the council are elected by wards, two from each ward, for a term of two years, one alderman from each ward retiring each year. Their number varies from six to seventy, according to the size of the city. The powers of the council include a long list of enumerated subjects of police regulation, such as is usual in city charters; the power of making appropriations and a limited power of taxation; and the unusual power to create municipal offices. The latter power requires a two-thirds vote of all the members of the council, and offices so created may be abolished only by a similar vote at the end of a fiscal year. This restriction and the provisions by which the council cannot itself make appointments to offices has prevented any abuse of the power to create offices. The control over appropriations is also an important power actively exercised by the council, in the large cities mainly through the finance committee. These two special powers make the councils of Illinois cities much more important factors in the municipal organization than in other American cities.

But the mayor also has important powers. He is elected for two years,¹ presides over the city council, has the usual limited veto power and has large authority over the appointment and control of the city officers. His appointments to office must be confirmed by the council, but usually this confirmation has been given without question, and in Chicago at least generally without even reference to a committee. His control over the appointed officers is further established by his large power of removal. This is not entirely unlimited, as he is required to file the reasons for removal with the council, and if he fails to do so, or if the council by a two-thirds vote disapproves of the removal, the officer is reinstated. But these restrictions are not likely to be effective except in the case of a gross abuse of the removal power; and in fact the mayor has a very substantial control over the city officers and can be held responsible for the conduct of the administrative branch of the city government.

¹ By a special law passed under the recent constitutional amendment the mayor of Chicago will in future be elected for four years.

Popular election of the city clerk, city attorney and city treasurer shows the influence of the earlier movement for the election of all city officers. At the time the Illinois law was enacted there was a smaller number of elective officers than was common in most American cities. But at present the trend of intelligent opinion on municipal organization would favor making at least the clerk and attorney appointive in the interest of administrative efficiency. In fact Chicago and perhaps other cities have established the appointive office of corporation counsel, and the office of city attorney has become of little importance.

The most serious weakness of the Illinois law is the narrow limit placed on the power of taxation, which has prevented the city governments from developing their activity to meet the needs of increased population. This has in turn promoted the tendency to create by additional legislation special authorities independent of the city governments to undertake certain local works, which might better have been intrusted to the city corporation. Thus not only boards of education, but library boards, park boards and the sanitary trustees in Cook county are separate corporations, adding greatly to the complexity of local government, tending to confuse the voters with a multiplicity of elective offices and reducing the effective responsibility to the community of those special officials.

Chicago has suffered most from the limitation on financial powers and the multiplication of authorities. With forty times the population of any other city in the state, the metropolitan community has had to meet problems that have not begun to arise in the smaller cities. The unsatisfactory local situation, with the difficulty of securing adequate changes in the general law, has led to the adoption of a constitutional amendment authorizing special legislation for Chicago, subject to approval by a referendum vote, and a special commission is now drafting a new charter for Chicago to be submitted to the next session of the state legislature.

Doubtless some special provisions are almost necessary for a city so vastly different as is Chicago from the others in the state. But many of the difficulties affect the smaller places only in a less degree; and many of the changes to be made ought to be

made in the general law. And it is to be regretted that the ability of Illinois legislators has so far declined and they seem unable to perfect and adapt to modern conditions the excellent law that was passed over thirty years ago.

Ohio

The second constitution of Ohio, adopted in 1851, made the first attempt in the United States to prohibit special legislation for cities and to require the establishment of a general system of municipal organization. But by the device of classifying cities on the basis of population, all the larger cities in the state had many peculiar features in their municipal government, established by laws which in fact applied only to single cities. And for over fifty years the Supreme Court of the state accepted laws of this kind, general in form but special in their application, as complying with the constitutional provisions.¹

In 1902, however, the Supreme Court practically reversed its former attitude and held that the whole body of legislation on municipal government disclosed the legislative intent to substitute isolation for classification. Certain acts brought before the court were declared unconstitutional, and the opinion showed that most of the legislation in cities would be held unconstitutional if brought before it.² This situation led to a special session of the state legislature, which enacted a new municipal code for all the cities and villages in Ohio. In framing the original draft of the bill Governor Bushnell took an active part; and in the work of the conference committee to decide conflicts between the two houses the final determination was said to have been due in large measure to the influence of a United States senator and the leader of the dominant political organization in Cincinnati.

The Ohio code is much more detailed than the Illinois law.³ It provides a numerous and complicated list of elective offices, burdensome to the small cities, and with a lack of effective organization and clearly defined responsibility.

¹ State v. Pugh, 43 Ohio State, 98.

² State v. Jones, 66 Ohio State, 453.

³ Wade H. Ellis, *The Municipal Code of Ohio*.

Cities are defined as municipal corporations of over 5000 population, and the same organization is applied to all the seventy-two cities in the state. The city council consists of a single chamber, the number of members varying with the population. The larger number of members are elected by wards, each electing one councilman; but a small number are also elected on a general ticket for the whole city. The powers of the council are restricted to those of a legislative character; and it is expressly provided that it shall perform no administrative duties and exercise no appointing power, except in regard to its own organization and in confirming nominations to certain positions named in the act. The powers granted include authority to enact police ordinances, to vote appropriations and taxes, to determine the number of members on certain municipal boards and to fix the salaries and bonds of the statutory municipal officers. But there is no power to create municipal officers similar to that in the Illinois law; and even the establishment of minor positions is given to the executive officers. It may by a two-thirds vote remove officers after a trial on definite charges.

The mayor is elected for a term of two years. He has a limited veto power and a very restricted power over the selection of officials. Most of the important officers are elective; but the mayor nominates, subject to the confirmation of the council, members of the boards of public safety and health and appoints the members of the tax commission and the library board. It is made his duty to have a general supervision over all departments and city officers; but he has no power of removal or any other effective means of control over their actions. The narrow range of his authority is further indicated by the provision which vests executive power, not in the mayor, but in the list of elective and appointed executive officers.

Other elective officers are the treasurer, auditor, solicitor and the board of public service. These are all elected for two years, except the auditor, whose term is three years. The board of public service is the most significant of these. It consists of three or five members; and has charge of streets, sewers and other public improvements, of municipal water and lighting

plants, parks, markets, cemeteries and of all charitable and correctional institutions.

Of the appointed officers, the board of public safety is provided for in a very peculiar way. This is a bi-partisan board of two or four members, having supervision over the police and fire departments. Its members are appointed on the nomination of the mayor subject to the confirmation of *two-thirds* of the council, and failing this confirmation appointments are made by the governor of the state. This method was apparently adopted for political purposes, and under it the boards of public safety in about a dozen cities have been appointed by the governor.

The board of tax commissioners is also a bi-partisan body, consisting of four members appointed by the mayor, serving without compensation. To this board are referred the tax levies ordered by the council to cover its appropriations, and if it disapproves any item of the appropriation the tax levy must be reduced, unless the action of the board is overruled by a three-fourths vote of all the members of the council. The board also acts as a sinking fund commission.

By establishing a general system of municipal organization and uniform powers this code makes the law of municipal corporations in Ohio much simpler and more intelligible than formerly. The volume of litigation on municipal government is greatly reduced, and litigation to determine the meaning or constitutionality of disputed points is also lessened, since a decision for one city determines the point for all. The scope of municipal activities has not been enlarged, but every city may without further legislative action exercise all the powers that have been granted to any one.

In the organization of the council the plan of electing some members at large offers an opportunity for strengthening that branch of the municipal government. But the system of artificial and changeable wards is also retained, with its opportunities for gerrymandering. The board of public service absorbs the functions formerly given in many cities to a number of boards, and thus simplifies to some extent the municipal organization. But it may be questioned whether in the large cities

this has not placed in one department too many unrelated services. The provisions authorizing the merit system in the police and fire departments are at least a slight concession to the demand for eliminating spoils politics from the municipal service.

But in other respects this code is open to serious criticism. The number of municipal officers required in all cities is too cumbersome for many of the small cities; and the city council might well have been given authority to create offices as needed, as in the Illinois law. The number of elective officers is too large to permit the voters to learn the qualifications of the various candidates; and this tends to reduce popular control and increase the influence of party organizations. The variety in the methods of filling various offices prevents the concentration of responsibility; and in particular the authority of the mayor is inadequate. No provision is made for the merit system for the larger proportion of municipal employees, who are placed under the control of the board of public service.

Since this code was adopted there have been two sessions of the Ohio legislature. At each of these some minor amendments have been passed. The most important is the change in the date of municipal elections from April to November in the odd years. By changing the date of state elections in the future to the even years, municipal elections will be kept distinct from state and national elections; and with that provision there is perhaps some advantage in having all elections come in the fall. During the session of 1906 an effort was made to make some more important changes in the system of organization, especially by increasing the powers of the mayor. But nothing was accomplished.

Indiana

In 1905 a general revision of the Indiana municipal law was enacted by the legislature of that state. There was little public discussion and apparently no partisan motives affected the measure. The code as enacted simplifies somewhat the system of organization, and applies to all but the smallest places the centralized plan of mayoralty control which had been previously established in the larger cities.

One of the most important changes was the abolition of spring city elections and the extension of the terms of city officers from two to four years. The terms of officers which would have expired in the spring of 1905 were continued until the following January; and beginning in 1905, an election will be held for city officers in November of every fourth year. While spring elections are abolished, municipal elections are not combined with state and national elections, but as in Ohio come in an intervening year. Another provision making all elective officers ineligible for two terms in succession will, however, hinder the development of a continuous policy and seems entirely uncalled for, at least in the case of the members of the councils and the city clerk.

Municipal corporations are divided into two main classes: incorporated towns and cities. Any community may by popular vote be incorporated as a town; any community with more than 2500 population may become a city; and both cities and towns may be dissolved by popular vote.

A very simple system of organization is provided for the incorporated towns. Provision is made for the election of a board of trustees of three to seven members, one for each ward, but all elected at large; also for the election of a clerk and treasurer, or one person to act in both capacities. The trustees shall elect one of their number as president; shall appoint a marshall, who may also act as street commissioner and chief of the fire force; and shall have general charge of municipal matters in the town.

Cities are divided into five classes on the basis of population at the latest United States census; but the systems of government for the different classes are along similar lines. The first class includes cities over 100,000 population, of which Indianapolis is the only instance. The second class includes cities from 45,000 to 100,000, of which at present there are two—Evansville and Fort Wayne. The third class, from 20,000 to 45,000, has five cities—Terre Haute, South Bend, Muncie, New Albany and Anderson. The fourth class, from 10,000 to 20,000, has eleven cities; and the fifth class, those under 10,000, includes about fifty cities.

Variations in organization provided in the act are, however,

less frequent than the number of classes. The arrangements for the first two classes are practically identical; and also those for the third and fourth classes. There seems no substantial reason why there should have been more than three classes established.

Every city elects a council, a mayor and a city clerk. A city judge is also to be elected, except in cities of the fifth class, where the mayor acts in that capacity. A city treasurer is elected, except in cities of the first three classes which are county seats, where the county treasurer acts as city treasurer.

The council consists of one member from each ward, and from two to six members elected at large, the number of members at large to be half as many as the number elected by wards. Boundaries of wards may be changed once in six years by a two-thirds vote of all members of the council. The powers of the council include authority to establish police regulations in a long list of enumerated cases. New features in this list are the power to exclude saloons from the residence portions of cities, the power to regulate the height of buildings and the power to regulate railroad traffic within the city limits. The council can also levy taxes, vote loans up to two per cent of the taxable value of property and manage the finances. But it is provided that if a council fails to fix the tax levy and make appropriations before the first Monday of October, the levy and appropriations for the preceding year shall be continued and renewed for the current year. In cities of the fifth class council committees may exercise executive functions.

The mayor is given important and far reaching powers. He has the absolute power of appointing the heads of all departments in cities of the first four classes; and most of the executive officers in cities of the fifth class. These officers will not hold for any specified term, but any of them may be removed by the mayor, who is required to give notice to the officer and to state in a message to the council the reason for removal. This arrangement clearly makes the mayor responsible for the conduct of the executive departments, but at the same time encourages permanence of tenure in the management of these departments by requiring the mayor to state publicly his

reasons for exercising the power of removal. This system is moreover not introduced on purely theoretical grounds, but has already proven its practical advantages in a number of the larger Indiana cities.

Monthly meetings of the mayor and heads of departments are provided for; and this "cabinet" is authorized to adopt rules and regulations for the administration of the departments, including rules "which shall prescribe a common and systematic method of ascertaining the comparative fitness of applicants for office, position and promotion, and of selecting, appointing and promoting those found to be best fitted."

The mayor has also the usual limited veto power, including the right to veto items of appropriation bills, the power to recommend measures to the council and to call special sessions of that body. In cities of the third, fourth and fifth classes he presides over the council; he can also appoint special examiners to investigate the accounts of any department or officer at any time.

Executive officers and departments are regulated in considerable detail by the act, with variations for the different classes of cities. But in the main a uniform method is followed.

In cities of the fifth class there is a marshal, chief of fire force, street commissioner and board of health and charities appointed by the mayor, and a city attorney appointed by the council. Other executive functions are performed in these cities by council committees.

In the cities of the first four classes there are from five to eight departments. All cities in these classes have departments of finance, law, public works, assessment and collection and public health and charities. A department of public safety, controlling the police and fire force, is provided for cities of the first and second class, and is optional for cities of the third class. The variation seems to be due to the provision in the former law for state police boards in cities from 10,000 to 35,000 population. A special department of public parks is also provided for cities of the first two classes. By a peculiar arrangement cities of the second class are allowed to establish a special department of water works, which in other cities comes under the department of public works.

The departments of finance, law and assessment and collection are placed in charge of single officials—the comptroller, city attorney and the elected treasurer. The assessment of property for taxation is, however, not regulated by the municipal code, but by a general law on the subject for the whole state. Where a city establishes a sinking fund, there is provided a sinking fund commission, consisting of the comptroller and two other members appointed by the mayor—in this case the terms of the latter two members expiring at different times.

The other departments are in charge of boards, consisting of three members each, except for the park boards, which have four members. In all cases not more than two members of each board may belong to the same political party.

Salaries are regulated for the various classes of cities with too much detail. In some cases maximum salaries are specified; in others a minimum and maximum. But there is little discretion left to the councils; and with the growth of cities it is certain that there will be frequent amendments to the law in this respect. Of the boards, that for public works is allowed the largest remuneration; the board of public safety has a distinctly smaller rate; the board of health has a maximum of one hundred dollars for each member, while the park board must serve without compensation.

If municipal departments must be regulated by statute the Indiana plan of varying the system with a reasonable classification of cities is much better than the hard and fast provisions for all cities in the Ohio law. But in this respect the Illinois act, which permits the city councils to establish offices and regulate salaries, is better than either of the other laws.

Municipal ownership is authorized for water works, gas works, electric light works and heating and power plants, after a referendum vote. But the debt limit of two per cent of the taxable value is likely to prevent most cities from undertaking all these functions.

All franchises previously granted are legalized; and authority is given to grant new franchises, with no statutory restriction as to the term of the grant, while contracts for a supply of light, water or heat for city purposes may be made for periods of

twenty-five years. In these respects the new law shows a distinct reactionary movement in the interest of private corporations. Formerly franchises were limited to periods of ten and thirty-four years, according to the kind, and contracts for light were limited to ten years.

No simple verdict can be given on the act as a whole. The relaxation of the restrictions on franchise corporations is likely to prove a serious evil. The prohibition on the reëlection of members of the council will promote unnecessary changes in public policy. The opportunity to introduce other improvements has been neglected, and the act is far from perfect in respect to systematic arrangement of its various parts.

On the other hand, so far as concerns the organization of the municipal government, the measure is a decided advance on previous conditions in Indiana and a still greater improvement on existing conditions in other states. It is of no little advantage to have the law on this subject reduced to simpler and more systematic terms. This should reduce the amount of litigation in the courts and make the municipal system one that can be generally understood by the people. The centralization of executive powers and responsibility in the mayor should clarify the situation for the voters on election day, and the opportunity given by the law for the establishment of the merit system in the municipal service is at least a step in the right direction.

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ALSACE-LORRAINE AND ITS RELATION TO THE GERMAN EMPIRE

IN the peace preliminaries between the German Empire and France, February 26, 1871, the cession of Alsace-Lorraine definitely fixed the international status of that territory and determined its relation to all other states, including France. Article i, clause 1 of the peace preliminaries declares that "France renounces in favor of the German Empire all her rights and title to the territory lying east of a boundary line hereafter designated." Clause 2 fixes the line thus referred to, while clause 3 adds: "The German Empire shall possess this territory forever, in full sovereignty and with all the rights of ownership." By this act all the interests of France in Alsace-Lorraine passed to Germany, and the actual possession of the territory effected by conquest in August, 1870, received its formal recognition.

The settlement of the question of the status of Alsace-Lorraine with respect to international law served merely to raise the question as to its status with respect to constitutional law. The peace preliminaries determined the relation of the territory to third powers, but it did not, and could not, determine its relations to Germany. Here was a problem which touched the internal organization of the empire. By the fortunes of war, Germany found herself possessed, one might well say repossessed, of a considerable territory, for the disposition and administration of which the imperial constitution made no provision. The adjustment of the new fact to the theory of the constitution, the mortising of the new acquisition into the existing framework of German federal government, was the task laid upon German jurists and statesmen.

In the solution of the problem three ways were open: to erect the new territory into a state, with rights and powers equal to those possessed by the other federated states; to incorporate Alsace-Lorraine into the territory of one of the exist-

ing states; or to hold it as imperial territory, under the sovereign control of the empire and administered by organs of the imperial government, wholly independent of any and all of the federated states as such.¹ At no time was the idea held, at least to any extent, of making Alsace-Lorraine the twenty-sixth state in the Union. Although such a proceeding could have been carried out by means of a constitutional amendment, too many political objections stood in the way. The third solution of the problem—a territorial status under the immediate control of the empire—seemed to present the fewest difficulties, and it was therefore chosen. For such a relationship, however, the imperial constitution made no provision. It recognized no part of the empire which was immediately subject to the central authority or which was to be looked upon simply as the object of imperial powers. The constitution assumed that, between the individual "*Gebiete*" with their people and the imperial power, a state power was interposed, and that each state into which the territory of the empire and its population was organized was a subject or holder of rights, a member of the empire, and as such had a share in the empire itself.² It is evident that the theory upon which the federal organization of the empire is built—the theory of mediate government through the states—could find no application to Alsace-Lorraine, unless that territory should be erected into a state. Where a territory is governed wholly and exclusively by the central authority; where self-government and autonomy, in the sense in which these words apply to federated states, are wanting; where the laws are not laws by the territory, but laws by the central government for the territory, the federal idea fails. This is precisely the situation in Alsace-Lorraine. The relation between the empire and Alsace-Lorraine is not that of a federal government toward one of its member states, but that of a unitary state toward one of its provinces. And this must always be the relation between a federal state and its territories. True, the territory may be granted large powers of self-government, but, unlike the powers of self-government exercised

¹ Hænel, *Staatsrecht*, vol. i, p. 824; Anschütz, in Holtzendorff-Kohler, *Encyclopädie der Rechtswissenschaft*, vol. ii, p. 559.

² Laband, *Staatsrecht*, vol. ii, p. 198.

by a state under the federal form of government, these powers are not original but derivative. The federal government gave and the federal government may take away.

The German jurists and statesmen harbored no fond delusions with respect to the newly acquired territory and the imperial constitution. The constitution did not extend to these annexed districts *ex proprio vigore*. It had no footing there until it was carried thither expressly by imperial legislation. This fact is clearly recognized in the law on the union of Alsace-Lorraine with the German Empire, of June 9, 1871. This law, after declaring that the land acquired from France by cession was forever united to the German Empire, fixed a date on which the imperial constitution should go into effect there. It says:

The constitution of the German Empire shall go into effect in Alsace-Lorraine on January 1, 1873.¹ By order of the emperor, with the consent of the Federal Council, individual parts of the constitution may be introduced earlier.² The amendments and additions which may be necessary require the consent of the Imperial Diet. Article 3 of the imperial constitution [providing for a common *Indigenat*] shall go into effect at once.³

In other words, the constitution was made for the states, not for the territories, and it entered the territories only when carried there by federal law. The law by which it was introduced may be amended or repealed at any time without the consent of Alsace-Lorraine.⁴

The introduction of the imperial constitution into Alsace-Lorraine did not simplify the relations of that territory, either with respect to the empire or to the several states of the union. Many difficulties have arisen in determining its exact legal position. It is treated in many respects as if it were actually a member of the union; but since the union is regarded as a union of states, and since this territory, unlike the territories in the

¹ Afterward extended to January 1, 1874. See *Reichsgesetzblatt*, 1871, p. 208.

² Cf. Triepel, *Quellensammlung*, p. 111, note 5.

³ Law of June 9, 1871, sec. 2, *RGBl.*, 1871, p. 212.

⁴ Compare Hænel, *op. cit.*, p. 834.

United States, is not even a "state in the making," membership in the empire is not attributed to it.

Neither with respect to the empire, nor with respect to foreign states, is Alsace-Lorraine an independent subject of sovereign rights, with constitutional powers and obligations. It is logically no state, but a part [*Bestandteil*], an administrative district, of the empire. . . . The contrast between the territory and the member states of the empire coincides exactly with the contrast between a decentralized unitary state and a federal state.¹

- * A glance at the historical development of the organization of Alsace-Lorraine will serve to make its position in the empire more clear. In considering the evolution of its territorial government, five periods may be distinguished, each of which must be briefly noted.

I. The period of military dictatorship, from August, 1870, to June, 1871. This period must be subdivided into two minor ones: (1) from August 14, 1870, the date of occupancy by the German troops, to the cession of the territory by France, February 26, 1871; (2) from February 26, 1871, to the annexation of the territory by the law of June 9, 1871, which went into effect June 28, 1871.

(1) During the first of these two minor periods, Alsace-Lorraine was placed under the authority of a military governor-general, who was appointed by the king of Prussia, and who acted, not in accordance with the principles of the North German constitution, but with the principles of international law touching such cases. By the mere act of occupation by hostile troops and by the assumption of military control by the commanding officer of those troops, Alsace-Lorraine did not cease to be French territory; but the power of France was suspended and French legislation was excluded in the districts occupied. In such districts the commander-in-chief of the German army, or his appointees, had the right to exercise the authority usually exercised by the state, subject only to the limitations

¹ Laband, vol. ii, p. 199.

fixed by international usage.¹ Nor was the occupied territory subjected during the war to the German state, the empire, which was erected only on January 1, 1871. It was simply in the military power of the allied German forces.²

(2) On the conclusion of peace between Germany and France, no immediate change took place in the governmental organization of the ceded districts. The government of Alsace-Lorraine was, however, put upon a different legal foundation. It no longer rested upon a military basis, but upon a legal basis created by the transfer of the territory, with all right and title therein, to Germany. Through this treaty of transfer, the status of Alsace-Lorraine with respect to third powers was definitely fixed. Its status with respect to the empire, however, was a matter of German constitutional law. The fact that the German Empire was composed of states did not make Alsace-Lorraine a state. Prior to the conclusion of the treaty it had been simply an integral part of a unitary state. The mere act of signing the treaty did not give it a character which it did not possess before. The government which had been temporarily set up during the period of military occupation continued after the conclusion of peace, until, on June 28, 1871, Alsace-Lorraine was formally annexed to the German Empire by imperial legislation.

II. The second period, from June 28, 1871, to December 31, 1873, may be termed the period of the dictatorship of the German emperor. The key to this period is furnished by the law of June 9, 1871, the law of annexation. This law did not determine the position of Alsace-Lorraine in the empire in explicit terms which left no room for dispute. The law is silent upon the

¹ The occupation did not, therefore, *ipso facto* annul the French laws in force nor dissolve the general organization of the territory occupied. It did not destroy private obligations. A new power took the place of the French state and carried on the government as already organized, so far as this could be done under the circumstances.

² Laband, vol. ii, p. 237: "In the invested districts, therefore, the king of Prussia, as commander-in-chief of the German forces, exercised authority based not on constitutional law but on international law. So far as the government of this French territory was concerned, he did not exercise the power of the German state but of the French state. Hence the ordinances issued during the occupation are not to be regarded as acts of the German Empire but as acts of the German commander-in-chief, carried out in place of the French sovereignty at that time suspended."

direct question of the status of the new territory with respect to the imperial system. It is clear, however, that Alsace-Lorraine did not become a member of the empire, for the members of the empire are states and Alsace-Lorraine was not a state. It became possessed of none of the rights belonging to the several states, growing out of their membership in the empire. The fact that the law of annexation fixed a date on which the imperial constitution should go into effect in the newly acquired territory showed conclusively that the constitution did not extend to the annexed districts *ex proprio vigore*. It follows that such rights as did exist were rights based on law, not on the constitution; that they were rights granted, not rights reserved.

The first clause of section 3 of the law of annexation declares that the state power in Alsace-Lorraine shall be exercised by the emperor. Under this provision the government of Alsace-Lorraine immediately took on a strongly monarchic aspect. It must be borne in mind, however, that as wielder of the state power in Alsace-Lorraine the emperor was not acting in his own name or in his own right. The power that he held was delegated power, and he exercised it solely as an organ of the empire. Alsace-Lorraine was imperial territory, and whatever authority was exercised there was imperial authority, exercised by imperial organs. The emperor did not become the ruler of Alsace-Lorraine in the sense in which he is ruler of Prussia, nor was Alsace-Lorraine joined with Prussia in a personal union.¹ The emperor was simply an imperial organ, exercising imperial power in an imperial territory.

In centralizing the legislative and administrative powers in Alsace-Lorraine in the hands of the emperor, the law of June 9, 1871, placed upon the exercise of these powers certain limitations, operative both in the sphere of administration and in that of legislation. Thus, for example, clause 2, section 3, says:

¹ Laband, vol. ii, pp. 203, 204: "Elsass-Lothringen ist demnach keine Monarchie, denn es hat keinen persönlichen Landesherren, und ist ebensowenig eine Republik, denn die Gesamtheit der Elsass-Lothringer ist nicht das Subject der Staatsgewalt. Es ist ein Bestandteil oder Provinz des Reiches. Das Subject der Staatsgewalt in Elsass-Lothringen ist das Reich, d. h. die Gesamtheit der zum Reich vereinigten Staaten in ihrer begrifflichen Einheit, in ihrer staatlichen Persönlichkeit."

Until the time when the imperial constitution shall go into effect, the emperor shall be bound by the consent of the Federal Council in the exercise of legislative power, and in the contracting of loans or the assumption of guaranties for Alsace-Lorraine, which shall impose any burden upon the empire, he shall be bound by the consent of the Imperial Diet also.

Moreover, by the provisions of section 4 of this law, "the ordinances and decrees of the emperor need for their validity the countersignature of the imperial chancellor, who assumes thereby the responsibility." By this provision the imperial chancellor became the sole, supreme head of the administration in the imperial territory, in all its branches; and with him, of course, the imperial chancery, in its various divisions, became charged with the regulation of matters pertaining to the territorial administration.

By the law December 30, 1871, section 4,¹ a new feature was added to the administrative organization of Alsace-Lorraine in the person of a president (*Oberpräsident*), whom the law designated as the "highest administrative authority in Alsace-Lorraine, with his official seat in Strassburg." Section 6 of the law assigned to this president a large sphere of activity in the immediate administration of the internal affairs of the territory, in addition to which the imperial chancellor was "empowered to hand over to him, wholly or in part, the authority which was exercised by the ministers under the French laws still in force." Further, section 5 of the law granted to the president the supervision over the various administrative boards in the territory, as well as over the officials subordinate to them, together with the task of seeing that the laws and ordinances were executed and the administration properly carried out. The president, also, acted in the capacity of an administrative instance in deciding differences arising between the boards subordinated to him and in passing upon complaints and decisions of inferior administrative authorities, or in submitting such complaints and decisions to the imperial chancellor. The president had under him, of course, a number of counsellors and assistants of various sorts such as the business imposed upon him seemed to require.

¹ *Gesetzbuch für Elsass-Lothringen*, 1872, No. 2, p. 49.

Concerning the legal position of the president, Laband says:

He occupied the constitutional position held by a minister. He was not in a constitutional sense responsible ; he had no power to act as the representative of the imperial chancellor ; he could countersign no ordinances of the emperor, he was bound to obey the instructions of the imperial chancellor in matters pertaining to the administrative service and stood under his supervision. The law, section 4, calls him the highest administrative authority *in Alsace-Lorraine*. He was not, however, the highest administrative authority *of Alsace-Lorraine* in any single department, but was subordinate, in every relation, to the imperial chancellor as the actual head of the administration . . . He was a higher instance for the whole internal administration ; he was competent for almost every ordinance which belonged, under the existing law, to the jurisdiction of the ministry ; upon him was laid the fixing of the territorial budget, the preparation of the drafts of laws and ordinances, the communication of instructions and official orders to the district presidents and other district authorities. But he was entrusted with the greater part of these functions only through an administrative order of the imperial chancellor. Legally he was without any responsibility of his own, and, with respect to the imperial chancellor, he occupied a dependent position. As a result the Chancery retained its full importance in all matters which were reserved by special ordinance to the jurisdiction of the imperial chancellor, or which, on account of their consequence, must be brought to his knowledge and submitted to his decision. There were, accordingly, two ministries existing at the same time, the one superimposed upon the other : the presidency, whose advantage lay in its mastery of details and in its more accurate knowledge of local persons and relations ; and the Imperial Chancery, whose advantage lay in its larger legal power and in its closer touch with the central authorities of the empire, as well as with the Federal Council and the Imperial Diet.¹

On May 27, 1871, the Federal Council created a special committee for Alsace-Lorraine, which to-day forms the ninth of the standing committees of that body.

Like the period of military dictatorship, the dictatorship of the emperor was a transition period and was so intended. The law which provided for this centralized monarchic government

¹Laband, vol. ii, p. 218.

of Alsace-Lorraine fixed also the date on which it should give way to other arrangements, through the introduction of the imperial constitution into the territory.

III. The third period extended from January 1, 1874, when the imperial constitution went into effect, to May 28, 1877, the date on which the law of May 2, 1877, became operative. With the introduction of the imperial constitution into Alsace-Lorraine on January 1, 1874, in accordance with the law of June 1873,¹ an essential change took place in the relation of the emperor to the affairs of the imperial territory. The monarchic concentration of power in Alsace-Lorraine came to an end. The legislative authority no longer lay in the hands of the emperor alone, with the consent of the Federal Council and Imperial Diet in certain matters; it passed to the ordinary legislative organs of the empire. The legislative power of the emperor, no longer dictatorial, dwindled to the mere engrossment and publication of the laws. His right to sanction the laws for Alsace-Lorraine vanished, and the veto-power which he had possessed in the period of imperial dictatorship disappeared also. From this time the right of sanction lay in the hands of the Federal Council alone.² One right, however, was retained by the emperor—a right which was not conferred upon him by the constitution. Section 8 of the law of June 25, 1873, provided that, with the consent of the Federal Council, the emperor might issue ordinances which should have the force of law. Ordinances of this sort must not conflict with the constitution or with the imperial laws in force at the time; they could be issued only when the Imperial Diet was not in session, and they must be laid before that body, for its action, at its next session. Moreover, the law of June 25, 1873, provided for the election of fifteen members to the Imperial Diet from Alsace-Lorraine.

So far as legislative competence is concerned, the introduction of the imperial constitution into Alsace-Lorraine removed the line of division which had split the general territory of the empire into two spheres of legislation. The general legislation

¹ *RGBI.*, 1873, p. 161; Triepel, p. 156; *GBI. für Elsaß-Lothringen*, p. 131.

² Laband, vol. ii, p. 250, note 1; Haenel, p. 827; Stöber, in *Archiv für das öffentliche Recht*, vol. i, p. 662, note 68; Meyer, *Staatsrecht*, p. 429.

of the empire extended to all the affairs of the imperial territory, not only to those matters which fell within the general competence of the empire, but also to those which, in the several states, were reserved to state legislation. In the imperial territory there existed no power save that of the empire, there was no law-giver for Alsace-Lorraine save the empire itself. As the law of June 9, 1871, section 3, clause 4, says: "After the introduction of the imperial constitution, until such time as the matter is otherwise regulated by imperial law, the power of legislation, even in those matters which, in the several states, are not subjected to the legislative authority of the empire, shall belong to the empire." No limitations, therefore, such as checked the legislative action of the empire with respect to the individual states, bound it with respect to Alsace-Lorraine.

The introduction of the imperial constitution wrought no change in the administrative organization of Alsace-Lorraine. On October 29, 1874, however, the emperor issued a decree having for its subject-matter the erection of an advisory Territorial Committee (*Landesausschuss*) for Alsace-Lorraine.¹ By the provisions of this decree, the Imperial chancellor was authorized to construct a Territorial Committee by calling upon the three *district assemblies*—Upper Alsace, Lower Alsace and Lorraine—each to elect ten of their number, as well as three alternates, to serve on the Committee. The term of office was fixed at three years; but if a member of the Committee lost his seat in the district assembly in the meantime, his membership in the Committee lapsed. The sessions of the Committee were not to be public, and the emperor reserved the right to determine the time and place of its meeting. The purpose for which the Committee was created, as indicated by the opening paragraph of the decree, was to give expert advice on such drafts of laws as might be laid before it, touching matters concerning Alsace-Lorraine which were not reserved under the constitution to the legislation of the empire. The territorial budget was to be submitted to this Committee. Bills to be presented to the Com-

¹ *GBL für Elsass-Lothringen*, p. 37; *RGBL*, 1877, p. 492, as appendix to law of May 2, 1877. Cf. also Triepel, p. 213.

mittee were to be brought to its notice by the president of the territory, who was authorized to attend its meetings either in person or by a representative. The president, or his representative, must be heard at any time on his request. The advice of the Committee was to be had before a bill was laid before the imperial legislative bodies for final determination. It should be noted, however, that the securing of such advice from the Committee was purely permissive. It was not at all obligatory. The competence of the Committee was merely advisory and in no sense legislative.

The decree [Laband explains] created no principle of law, it had the significance of an instruction simply. Even without the decree the government would not have been restrained from securing expert advice on draft of laws. On the other hand, the securing of such advice was not invested with the character of a legal requirement in territorial legislation.²

It is very evident, however, that the creation of such a Committee, even though it possessed no legal powers, served to strengthen the position of the president, in so far as his policy was supported by its advice.

IV. The fourth period begins with the law of May 2, 1877,³ which marks a significant step toward a larger degree of independence on the part of Alsace-Lorraine, particularly in legislative matters. By the provisions of this law the territorial Committee, which up to this time had possessed advisory powers only, became a fixed and important factor in the legislation of the territory. "Territorial laws for Alsace-Lorraine, including the annual territorial budget, shall proceed from the emperor, with the consent of the Federal Council, when the Territorial Committee, erected in accordance with the decree of October 29, 1874, shall have consented to the same."³

Several things should be observed with respect to the law of May 2, 1877. In the first place, a distinction, hitherto non-

¹ *Laband*, vol. ii. p. 219.

² Law on the territorial legislation for Alsace-Lorraine, *RGBl.* 1877, p. 491; Triepel, p. 213.

³ Law of May 2, 1877, sec. 1.

existent, was drawn between imperial competence and territorial legislation. Perhaps it were more accurate to say that two distinct fields were recognized in which the legislative power in Alsace-Lorraine operated. The passage of the law of May 2 did not in any wise affect clause 4 of section 3 of the law of June 9, 1871—the clause which declared that, after the introduction of the imperial constitution into Alsace-Lorraine, the legislative power in that territory belonged to the empire even in matters which in the several states did not fall within the imperial legislative competence; for section 2 of the law of May 2, 1877, expressly states that the power to enact territorial laws in the form of imperial legislation is reserved. The competence of the empire was, therefore, in no degree limited by this law. A form of legislation other than that provided for by the imperial constitution was, however, introduced in matters affecting the territory. Laws passed by the regular legislative organs of the empire, for the empire at large, would extend also to Alsace-Lorraine; but, by the terms of the law of May 2, 1877, a line of demarcation was drawn between the affairs of the empire in general and the affairs of Alsace-Lorraine in particular. No change was effected in the state power operating in the territory. It was still the power of the empire alone. But now that the Territorial Committee has been converted from an advisory into a consenting body, a distinction arose between laws touching the internal affairs of Alsace-Lorraine and laws concerning the empire as a whole and Alsace-Lorraine merely as a part of that whole. In other words, a distinction was drawn between laws operating *in* Alsace-Lorraine and laws made *for* Alsace-Lorraine. As to the nature of these laws, Laband says:

Territorial laws for Alsace-Lorraine are at present still imperial laws, *i. e.* laws sanctioned by the empire. Territorial laws for Alsace-Lorraine are *provincial laws of the empire* for Alsace-Lorraine, in matters which, so far as the rest of the empire is concerned, are excluded by the imperial constitution from the competence of the empire. For territorial laws of this sort, the law of May 2, 1877, prescribes a special form. So far as their nature and constitutional significance are concerned, however, they are not, like the laws of the individual states, an expression of autonomy, but a manifestation of imperial power. Au-

tonomy does not consist in the peculiar form in which laws come into being, but in the independent right to issue laws. Such a right presumes a subject to which it belongs. In the imperial territory such a subject is wanting.¹

All laws for Alsace-Lorraine, therefore, were still imperial laws; but two methods were provided by which they might be enacted: the usual process of imperial legislation, which, up to the passage of the law of May 2, 1877, was the only method, and the new method set forth in section 1 of the law, already quoted. This latter method became the regular mode of legislating for the territory, while the ordinary process of imperial legislation through the usual organs shrank to a mere right reserved by the empire for exceptional use.²

The new mode of legislation deviated from the ordinary process of imperial legislation in several particulars. The consent of the Imperial Diet was no longer necessary even in matters pertaining to the territorial budget. In its place stood the Territorial Committee, a body elected out of the territory itself, thus giving Alsace-Lorraine a positive voice in territorial legislation. The organs of territorial legislation were now the emperor, the Federal Council and the Territorial Committee. Another deviation manifested itself in the rôle played by the emperor in territorial legislation. Prior to the law of May 2, 1877, in conformity with article 7 of the imperial constitution, and following the ordinary method of imperial legislation, the laws for Alsace-Lorraine were sanctioned by the Federal Council. Under the provisions of section 1 of the law of May 2, 1877, legislation did not proceed, as stipulated in article 5 of the constitution, from the Federal Council and Imperial Diet,

¹ Laband, vol. ii, p. 251.

² Haenel, Staatsrecht, p. 828, states the matter thus: "Alle *Reichsangelegenheiten* werden auch für Elsass-Lothringen durch diejenigen Organe, in denjenigen Formen und mit denjenigen Rechtswirkungen von Reichswegen geordnet und verwaltet, wie dies gemeinschaftlich die Reichsverfassung vorschreibt. Dagegen die elsass-lothringschen *Landesangelegenheiten* werden von den Organen des Reiches in den besonderen Ordnungen, in den Formen und mit den Rechtswirkungen wahrgenommen, welche die Reichsgesetze oder das Partikularrecht für Elsass-Lothringen besonders vorschreiben."

but from the emperor, with the consent of the Federal Council and the Territorial Committee. The territorial laws were sanctioned by the emperor just as they had been sanctioned by him under the law of June 9, 1871, while the Federal Council, no longer the law-giver proper, was reduced to the level of the Territorial Committee—a body whose consent was necessary to the issue of a law by the emperor, but whose resolutions the emperor was not bound to engross and publish.¹

While the law of May 2, 1877, did not affect the administrative organization of the territory, certain changes which were taking place in the Imperial Chancery were making themselves felt in Alsace-Lorraine. The Imperial Chancery began, in 1873, to erect what had hitherto been mere "divisions" of one general office into separate "departments," each with a state secretary at its head.² On January 1, 1877, "division iii," which had been occupied with the affairs of Alsace-Lorraine, became a separate department, known as the "department for Alsace-Lorraine." At the same time "division iv" became the imperial department of justice. On March 17, 1878, a law was passed authorizing the imperial chancellor to appoint a substitute, or deputy, who might sign for him and assume other responsibilities imposed upon the chancellor by the imperial constitution or by law.³ The heads of departments, moreover, were made competent to act as such deputies, each within the jurisdiction of the department of which he was chief. As a result of this law, a new instance was thrust in between the president and the imperial chancellor, so far as the administrative affairs of the territory were concerned. This complicated the position of the president not a little. "The three instances, which had been created under the laws of the territory and of

¹ Laband, vol. ii, p. 252: "Zwar unterscheidet die Fassung des § 1 die Zustimmung des Bundesrats von derjenigen des Landesausschusses durch eine verschiedene Art der Erwähnung; wirklich entscheidend aber ist allein der Satz, dass dem Kaiser das Placet der Landesgesetze zusteht und er nicht rechtlich verpflichtet ist, ein vom Bundesrat beschlossenes Gesetz auszufertigen und zu verkündigen." The publication of the laws takes place by means of a special *Gazette for Alsace-Lorraine*.

² See Law of June 27, 1873 (*RGBl.*, 1873, p. 161; *GBL für Elsass-Lothringen*, 1873, p. 131); Ordinance of Dec. 22, 1875 (*RGBl.*, 1875, p. 379).

³ *RGBl.*, 1878, p. 7.

the empire, had become five. Furthermore, the departments of administration and of justice were torn asunder and assigned to two entirely separate and distinct boards."¹

V. In order to obviate the difficulties growing out of this state of affairs, a law was passed on July 4, 1879,² to go into effect on October 1, 1879, from which date is reckoned the fifth period in the development of the territorial organization—the system under which Alsace-Lorraine is governed at the present time. The changes made by this law were sweeping. The administration of the imperial territory was wholly revolutionized. It was entirely disassociated from the person of the imperial chancellor; the department of the Imperial Chancery for Alsace-Lorraine was abolished, and the seat of all the governmental organs of the territory was transferred to the territory itself. The office of president of the territory was likewise abolished. In order to carry on the functions of the department for Alsace-Lorraine, as well as those of the department of justice so far as they touched territorial matters, and in order to perform the duties which had been laid upon the president, a board was erected in Strassburg, under the name of "ministry for Alsace-Lorraine," with a secretary of state at its head.

In the place of the imperial chancellor and the territorial president, the law provided for a new official who should visibly embody in Alsace-Lorraine the sovereign authority of the empire. Section 1 of the law empowered the emperor to delegate the authority vested in himself, as representative (*Delegatar*) of the power of the state in Alsace-Lorraine, to an official to be known as the governor (*Statthalter*), whose appointment and dismissal were to be in the hands of the emperor, and whose residence should be in Strassburg. The scope of the authority to be thus delegated to the governor was to be fixed by an ordinance of the emperor.³ All the powers and duties which had been conferred by law or ordinance upon the imperial

¹ *Laband*, vol. ii, p. 220.

² *RGBl.*, 1879, p. 165; *Triepel*, p. 219.

³ Compare the following ordinances: July 23, 1879 (*RGBl.*, 1879, p. 282); September 28, 1885 (*RGBl.*, 1885, p. 273); March 15, 1888 (*RGBl.*, 1888, p. 130); June 20, 1888 (*RGBl.*, 1888, p. 189); December 11, 1889 (*RGBl.*, 1889, p. 2); March 14, 1893 (*RGBl.*, 1893, p. 137); November 5, 1894 (*RGBl.*, 1894, p. 529).

chancellor, in matters pertaining to Alsace-Lorraine, as well as the extraordinary powers assigned to the president by the law of December 30, 1871, were granted to the governor.² At the same time, the Territorial Committee was enlarged and its powers were increased. A Council of State, with advisory power, was added to the territorial organization, while the competence of the Federal Council was restricted by the transfer of certain functions heretofore exercised by that body to the new ministry.

The institutions of the imperial territory, as at present organized, are the following:

(1) *The emperor.* The state power in Alsace-Lorraine is vested in the empire. The exercise of that power is placed in the hands of the emperor. The legal title under which the emperor exercises this power is found in the law of June 9, 1871. The emperor is not the ruler or monarch of Alsace-Lorraine in the sense in which, for example, the king of Bavaria is monarch of Bavaria. Alsace-Lorraine is not an appurtenance of the imperial crown. Whatever authority is exercised by the emperor in the imperial territory is exercised in the name of the empire, never in his own name.³ The territorial ruler (*Landesherr*) of Alsace-Lorraine is the empire. The emperor is simply the agent (*Delegatar*) of the empire.

(2) *The governor.* The legal title of the governor (*Staatshalter*) rests upon the law of July 4, 1879, sections 1 and 2. He is appointed by the emperor and is also removable by him. The appointment is countersigned by the imperial chancellor,⁴ as is also the ordinance transferring to him the powers of the emperor. The governor acts in two capacities:

(a) He is the personal representative of the emperor, when

² Law of July 4, 1879, Sec. 2. For the law of December 30, 1871, see *GBL für Elsass-Lothringen*, 1872, p. 49. Sec. 10 of this law grants certain military powers to the president in case the public safety is threatened. This section was repealed by the law of June 18, 1902 (*RGBL*, 1902, p. 281).

³ Laband, vol. ii, pp. 221, 222; Meyer, *Staatsrecht*, p. 431, note 1; Stöber, *op. cit.*, pp. 660-658.

⁴ While the transfer of the emperor's power to the governor is optional, the appointment of a governor is obligatory. Cf. Laband, vol. ii, pp. 229, *et seq.*

the emperor sees fit to invest him with the powers he himself possesses in the imperial territory. The emperor is under no obligation to transfer his powers to the governor; the matter is purely optional with him. But when the governor has been once invested with the governmental powers of the emperor in Alsace-Lorraine, he becomes, until such time as these powers may be again resumed by the emperor, the vice-emperor. The powers thus transferred by the emperor attach to the person of the governor, not to the office. Hence, when the governor is hindered in the exercise of his imposed duties, these functions revert to the emperor. When acting as the representative of the emperor, the governor is not constitutionally responsible, nor does he stand in any disciplinary relation. He is, of course, responsible to the emperor for the proper discharge of his duties. The decrees and ordinances issued by the governor in his capacity as representative of the emperor, have the same force as imperial ordinances and decrees, and require for their validity the countersignature of the territorial secretary of state, who thereby assumes responsibility therefor.¹

(b) The governor is also an official of the empire. He occupies that position in Alsace-Lorraine which was formerly held by the imperial chancellor and the president.² As an official of the empire, however, the governor is not a deputy of the imperial chancellor, within the meaning of the law respecting the appointment of deputies to the imperial chancellor.³ As Laband explains:

The governor takes the place of the imperial chancellor not as his delegate but as his successor. The competence of the imperial chancellor was divided into two spheres by the law of July 4, 1879; the competence in general affairs of the empire, and the competence in matters pertaining to the imperial territory. The latter has been taken away from the imperial chancellor and given to the governor. The theory of the imperial constitution, that there is but one imperial minister, has been changed by the law of 1879. Since then there have been two.

¹ Law of July 4, 1879, sec. 4, cl. 1.

² *Ibid.* sec. 2.

³ Law of March 17, 1878, (*RGBl.*, 1878, p. 7.)

The governor is the imperial chancellor for Alsace-Lorraine, just as the Territorial Committee is the Imperial Diet for Alsace-Lorraine.¹

In so far as he acts in the capacity of an official of the empire, the governor is responsible. He is responsible, however, not to the Territorial Committee, but to the Imperial Diet—at least in theory. In practice, however, he would seem to be responsible to the Territorial Committee.

The governor has no relations whatever with the Imperial Diet, while the Territorial Committee, in fixing the budget, auditing the accounts, discussing measures, petitions, *etc.*, is in a position to criticize the action of the government, and only over against this body can the government justify its acts and establish its propositions.²

Theoretically, the governor should countersign the ordinances of the emperor touching territorial matters, *i. e.* those matters which, in the division of powers recognized in the imperial constitution, fall within the competence of the individual states.³ Here also theory and practice fail to coincide. Laws affecting the territorial affairs of Alsace-Lorraine and passed (under the reservation contained in section 2, clause 1, of the law of May 2, 1877) by the legislative organs of the empire, are signed by the governor and by the imperial chancellor, the latter assuming the responsibility for the law and the supervision of its execution.⁴ In all those matters in which the governor acts as an official of the empire, and as successor of the imperial chancellor, the territorial state secretary has the rights and responsibility of a deputy of the governor, to the same extent in which, under the law of March 17, 1878, such rights and responsibility are possessed by the deputy of the imperial chancellor. The right of the governor himself to perform any official function which falls within his sphere is reserved.⁵

¹ Laband, vol. ii, p. 229.

² *Ibid.* p. 231.

³ Law of July 4, 1879, secs. 2 and 4. See also law of June 9, 1871, sec. 3, cl. 4, and law of May 2, 1877, secs. 1 and 2. Compare Laband, vol. ii, p. 230; Meyer, *Staatsrecht*, p. 432; Arndt, *Staatsrecht*, p. 754; Kayser, in Holtzendorff's *Rechtslexikon*, vol. iii, p. 405; Leoni, *Das öffentliche Recht des Reichslandes Elsass-Lothringen*, pp. 89, 167 *et seq.*

⁴ See examples cited by Laband, vol. ii, p. 230, note 5.

⁵ Law of July 4, 1879, sec. 4, cl. 2.

(3) *The ministry*—no longer located in Berlin as a department of the Imperial Chancery, but, as already noted, transferred to Strassburg—still maintains the character of an imperial board, equally with the other imperial departments, such as the department of the interior or the department of justice; not, however, under the imperial chancellor, but under the governor. At the head of the ministry is a state secretary, who, as noted in the preceding paragraph, bears the same relation to the governor in certain matters as the deputy of the imperial chancellor bears to that official under the law of March 18, 1878. The ministry is grouped into several divisions, at the head of each of which is placed an under-secretary of state. Both the state secretary and the under-secretaries of state are appointed by the emperor. These appointments are countersigned by the governor, to whom is assigned the appointment of the other high ministerial officials.¹ The details of the organization of the ministry are fixed by ordinance of the emperor.² The powers and duties of the ministry include all those which formerly rested upon the Imperial Chancery department for Alsace-Lorraine, as well as those which belonged to the president prior to the passage of the law of July 4, 1879, together with such further competence as may have been granted since by territorial legislation.³ Under the ministry stand the various administrative and judicial authorities of the territory, with the exception of those concerned with matters which, like the post and telegraph, imperial railroads and the imperial bank, belong to the competence of the empire, and military matters, which are administered by Prussia.⁴

(4) *Council of state.* By the provisions of section 9 of the law of July 4, 1879, a council of state was created, consisting of

¹ Law of July 4, 1879, sec. 6. The subordinate officials are appointed by the state secretary. As to the legal relations of these officials, see the law of July 4, 1879, sec. 6, cl. 3; also Laband, vol. ii, pp. 233 *et seq.*; Haenel, *Staatsrecht*, p. 831; Meyer, *Staatsrecht*, p. 440, note 4; Leoni, *op. cit.*, pp. 128 *et seq.*

² Law of July 4, 1879, sec. 5; ordinance of July 23, 1879 (*GBL. für Elsass-Lothringen*, 1879, p. 81), amended by ordinances of July 29, 1881 (*GBL.*, 1881, p. 95); April 21, 1882 (*GBL.*, 1882, p. 67); April 25, 1887 (*GBL.*, 1887, p. 43); Jan. 16, 1895 (*GBL.*, 1895, p. 3); April 2, 1902 (*GBL.*, 1902, p. 29).

³ Law of July 4, 1879, sec. 3.

⁴ See Leoni, *Das Verfassungsrecht von Elsass-Lothringen* (1892), pp. 92 *et seq.*

the state secretary, the under-secretaries, the president of the supreme court of the territory, the chief attorney attached to the supreme court, and from eight to twelve members appointed by the emperor for a term of three years. Three of the members appointed by the emperor are nominated by the Territorial Committee. The meetings of the council of state are presided over by the governor or, in case he is prevented from acting, by the state secretary.¹

The functions of the council of state are purely advisory, and in no sense legislative or judicial.² The council is called upon to give an opinion upon the drafts of all proposed laws and of general ordinances issued for the execution of those laws, as well as on matters which may be submitted to it by the governor. The law of July 4, 1879, requires that all laws and general ordinances, without exception, shall be laid before the council of state. Should this be neglected or omitted, however, the validity of the measure would be in no wise affected.³ The council of state is not an innovation in the organization of Alsace-Lorraine. It is rather the revival of an institution long and favorably known there—the *conseil d' état* whose functions seemed specially needed in the peculiar conditions existing in Alsace-Lorraine.⁴ The reasons for its revival were set forth in the "motives" to section 9 of the law of July 4, 1879:

It will hardly be doubted that a comprehensive and thorough consideration of the propositions to be laid by the government before the legislative factors is better secured, if the preparation of those propositions is not left to the several ministerial departments alone, but is handed over for discussion to a body in which are combined a knowledge of law and of business, an insight into the needs of the territory, and an assured position in life, removed as far as possible from the struggles of political parties. The initiative and the preliminary draft would naturally fall, as a rule, to the minister of the department concerned, but the necessary scrutiny of the law to ascertain whether it would be useful and practicable, what reaction it might have upon the interests of the

¹ Law of July 4, 1879, sec. 10. The order of business is fixed by the emperor.

² Legislative and other special functions may, however, be granted to it by territorial legislation. Law of July 4, 1879, sec. 9.

³ Leoni, *op. cit.* p. 96.

⁴ *Ibid.* p. 95.

territory administered by other departments, and, finally, whether the purpose of the law has reached its desired expression in the wording of the draft—this transcends the scope of the individual department.

(5) *The Federal Council* of the empire is an organ of legislation in Alsace-Lorraine. According to sections 1 and 2 of the law of May 2, 1877—sections which were not repealed by the law of July 4, 1879—laws for Alsace-Lorraine are issued by the emperor with the consent of the Federal Council, provided the consent of the Territorial Committee has been obtained to the desired measure. By special provision, however, the right is reserved to legislate for Alsace-Lorraine through the usual organs of imperial legislation. The laws of Alsace-Lorraine, then, as well as the laws of the empire, require for their validity the consent of the Federal Council. It must not be inferred, however, that the position of the Federal Council is the same in both cases. According to article 5 of the imperial constitution, the legislative power of the empire is exercised by the Federal Council and the Imperial Diet, and a majority in both bodies is necessary and sufficient. Such consent being had, the emperor is bound to engross and publish the law. The prevailing view is that the Federal Council is the imperial organ in which legislative power rests, from which the mandatory element in the law proceeds and to which the ordinance power is assigned. In strictly territorial legislation, on the contrary, the *placet* belongs to the emperor. It is he who, as holder of state power (*Träger der Staatsgewalt*) in Alsace-Lorraine, exercises the legislative power. Section 1 of the law of May 2, 1877, explicitly declares it. In territorial legislation, therefore, the Federal Council has no authority different from that possessed by the Territorial Committee. The required consent of the Federal Council in territorial legislation is a constitutional check upon the power of the emperor. The functions of the Federal Council are, in this case, those of a parliamentary body or upper house.¹

¹ See Stenographic Reports of the Imperial Diet, 1879, vol. ii, p. 1631. It is in accord with this idea that the power to issue ordinances for the execution of the territorial laws belongs to the emperor and not to the Federal Council. So far as territorial laws are concerned, article 7, cl. 2 of the imperial constitution does not operate. Leoni, *op. cit.* p. 54.

The coöperation of the Federal Council is necessary in the discharge of certain administrative business. The government is bound to lay before the Federal Council the accounts of the territorial budget.¹ The compulsory retirement of an official who has become incapacitated for the performance of his duties, by reasons of bodily infirmity or on account of mental or physical weakness, can be brought about, in the case of officials appointed by the emperor, by an order of the emperor, but only with the consent of the Federal Council.² Ordinances of the emperor touching the erection of disciplinary chambers and the delimitation of disciplinary districts are issued with the consent of the Federal Council. The Federal Council selects the members of the disciplinary chambers and the order of business in the disciplinary boards is subjected to its approval.³

(6) *The Territorial Committee* is a creation of imperial law, and so long as the empire reserves to itself the power to give a constitution to Alsace-Lorraine, an imperial law may wipe it out of existence. In this respect a sharp contrast is drawn between the Territorial Committee and the Diets (*Landtage*) of the several German states. A further difference is found in the fact that the powers usually exercised by the assemblies of the states are not exercised by the Territorial Committee alone or exclusively, but are granted also to the Imperial Diet by the reservation in the law of May 2, 1877, already referred to. As a result, the coöperation of the Territorial Committee in territorial legislation is not a necessary condition, but an optional one. On the other hand, the legal position of the Territorial Committee is not identical with that of a provincial assembly. It has, under the law, a full right of coöperation in legislation, where the reserved imperial right to legislate is not exercised, and in fixing the budget. It exercises all the rights which

¹ Law of May 2, 1877, sec. 3.

² Law of March 31, 1873, sec. 66. With respect to the other officials the governor decides the question of retirement, and from his decision an appeal may be taken to the Federal Council. See Leoni, *op. cit.* p. 54.

³ Law of March 31, 1873, secs. 87, 91, 92, 93. See also law July 4, 1879, sec. 8. In appeals touching ecclesiastical matters (*Rekurse wegen Missbrauchs, etc.*) the Federal Council decides after investigation by its judicial committee. In this respect it takes the place of the French *Conseil d'Etat*. Law of December 31, 1871, sec. 9.

usually appertain to the representative body in a constitutional state. The territory, however, is not a state, and for that reason it can have no state organs. The powers of the Territorial Committee are derived wholly from the empire, and its whole existence rests upon imperial law. It is therefore an organ of the empire, or, to use the words of Laband, it is a "special substitute *Reichstag*, which operates in the affairs of Alsace-Lorraine in place of the regular *Reichstag*." It does not represent a "people of Alsace-Lorraine," but the "German people of the Empire, so far as that people may be domiciled in Alsace-Lorraine and may be interested, for that reason, in the special affairs of the territory. In contrast with the *Reichstag* it is a special representative of the population of Alsace-Lorraine, but it is an organ of the empire just as the *Reichstag* is."¹

The Territorial Committee is composed of 58 members, 34 of whom are elected by the district assemblies out of their own membership,² four are chosen in the same manner by the communal councils of the cities of Strassburg, Colmar, Metz and Mülhausen, one from each city,³ and 20 are elected by indirect ballot from the various circles into which the territory is divided.⁴ The term of office is three years. The emperor has the exclusive right to call, adjourn and dissolve the Territorial Committee.⁵ The ministers or their representatives have a right to

¹ Laband, vol. ii, p. 225. A distinction is made here between "people" (*Volk*) and "population" (*Bevölkerung*). Jellinek, *Staatsfragmente*, p. 287, declares that the Territorial Committee is not an organ of the empire, but of the territory as a corporate body, which has itself received its organization through this very Territorial Committee. He further claims that the Committee, by reason of its share in the function of legislation, is not the organ of a provincial corporation but is a state organ.

² That is, 10 by the district assembly of Upper Alsace, 11 by the district assembly of Lower Alsace, and 13 by the district assembly of Lorraine. Should a member thus elected cease to be a member of the district assembly, his membership in the Committee ceases at the same time. Decree of Oct. 29, 1875, cl. 2.

³ Each Communal Council elects from its own body, and membership in the Committee ceases with the loss of membership in the council.

⁴ The city communes of Colmar and Mülhausen are excluded from voting in the election of members from the circles of Colmar and Mülhausen. Law of July 4, 1879, sec. 13.

⁵ Law of July 4, 1879, sec. 19. The dissolution of the Committee carries with it

be present during the transaction of business by the Committee, and must be heard at any time on their own request.¹ The general provisions of the imperial law protecting the members of representative bodies apply also to the members of the Territorial Committee.² The special provisions, however, which concern members of the Imperial Diet particularly, have no application.³

Having discussed briefly the organization of Alsace-Lorraine, a few words must be added respecting legislation in the territory. Laws may come into being in Alsace-Lorraine in any one of three ways: (1) by a decree of the emperor with the consent of the Federal Council and the Territorial Committee; (2) by a decree of the emperor with the consent of the Federal Council and the Imperial Diet; and, (3) by a decree of the emperor with the consent of the Federal Council, in the form of a provisional ordinance having the force of law. The first method is generally employed.

(1) In legislation on matters pertaining to Alsace-Lorraine, that is, in what may be termed territorial legislation, the right of initiative belongs not only to the government, but to the Federal Council and the Territorial Committee.⁴ Before a bill is submitted to these legislative bodies, it is laid before the council of state for its expert opinion, and is then introduced into the Federal Council. From the Federal Council it passes to the Territorial Committee. The result of the deliberation in the Federal Council is communicated to the governor by the president of the Federal Council, while the action of the Territorial Committee is brought to the knowledge of the government by the president of the Committee. The government is not bound by

the dissolution of the district assemblies. A new election of assemblies must take place within three months and of the Committee within six months from the date of dissolution.

¹ Law of July 4, 1879, sec. 21.

² Law of August 30, 1871, art. 1. See Laband, vol. ii, p. 227; Leoni, *op. cit.*, p. 72; Meyer, *Staatsrecht*, p. 426, note 17.

³ The members of the Committee may and do receive compensation. This is at present fixed at 20 marks *per diem* with mileage and is paid out of the territorial treasury.

⁴ Law of July 4, 1879, sec. 21.

the action of the Federal Council or Territorial Committee, but may withdraw the measure at any time. Nor is there any period fixed within which the government, after the Federal Council has acted upon a bill, must submit that bill to the Territorial Committee for its action or to the emperor for his sanction. Nothing stands legally in the way of holding bills which have been passed by the Federal Council before the beginning of the session of the Territorial Committee or during such session, and submitting them to the action of the Committee at a subsequent session.¹

Both the Federal Council and the Territorial Committee may amend bills submitted to them. Should amendments be made in the Territorial Committee, no matter what the nature of the amendment may be or how seemingly unimportant, the bill must be returned to the Federal Council for its consent, since, as Leoni observes, "the activity of the Federal Council may not at any time be made contingent upon the views of the government as to the importance or unimportance of the amendments." When a bill is accepted by the Territorial Committee without alteration, a further action of the Federal Council is not necessary, as in imperial legislation, nor is it customary in territorial legislation.

The sanction of a law is imparted by the emperor, not, as in imperial legislation, by the Federal Council. In territorial legislation the Federal Council stands upon the same level with the Territorial Committee, possessing no authority which that body does not also possess. "It is not a lawgiver proper. Its consent is simply a condition to the issue of a law on the part of the emperor."² In deciding whether a bill shall become law, the emperor is perfectly free to exercise his own discretion. He is not in any sense bound by the majority vote of the Federal Council,³ nor does the fact that the bill has passed both legislative bodies lay upon him any legal obligation whatever to

¹ Leoni, *op. cit.*, p. 162.

² Laband, vol. II, p. 252; Leoni, *op. cit.*, p. 161.

³ "The emperor may sanction a bill although the Prussian delegates in the Federal Council have voted against it and may refuse sanction although the Prussian votes in the Federal Council are in the affirmative." Leoni, *op. cit.*, p. 162.

impart to that bill his sanction. Bills which have received the sanction of the emperor are engrossed by him (*ausgefertigt*), countersigned by the governor or by his deputy, the territorial state secretary and published in the *Gazette for Alsace-Lorraine*.

(2) In section 2 of the law of May 2, 1877, the right of passing laws for Alsace-Lorraine in the way of ordinary imperial legislation is specially reserved. Under the provisions of this law, a measure affecting territorial matters in Alsace-Lorraine may be passed by the Federal Council and the Imperial Diet with the coöperation of the emperor, with no reference whatever to the Territorial Committee. In such a case the bill might originate in the Imperial Diet as well as in the Federal Council, and it would not be submitted to the territorial council of state for its opinion. Moreover, bills passed in the form of ordinary imperial legislation, though the matters dealt with be purely territorial, do not lose thereby their character of imperial laws.¹ The fact that laws affecting the imperial territory may be passed in two different modes might well lead to serious complications. Moreover, delicate questions might arise as to the status of a measure which, voted down in the Territorial Committee, was thereupon introduced in the Imperial Diet by the Federal Council for adoption in the way of imperial legislation.

A question arises at this point as to the relation of laws passed in the form of territorial legislation to those passed in the form of imperial legislation. According to article 2 of the imperial constitution, imperial laws take precedence of state laws. The decisive fact is not the date of publication. The later law does not as such repeal the earlier. The principle is simply that an expression of will on the part of a higher power overrides an expression of will on the part of a subordinate power. In Alsace-Lorraine, however, there is but one state power—the power of the empire. Imperial laws for Alsace-Lorraine and territorial laws for Alsace-Lorraine passed in the way of imperial legisla-

¹ Laband, vol. ii. p. 251; Haenel, p. 828; Stöber, *op. cit.*, pp. 652 *et seq.* The statement of Leoni, *op. cit.*, p. 163: "The coöperation of the Imperial Diet in place of the Territorial Committee does not make the law an imperial law; it remains in every case a territorial law under the sanction of the emperor, where a matter not regulated by the imperial constitution or the territorial constitution forms the subject-matter," is a strained construction of sec. 2 of the law of May 2, 1877.

tion are both expressions of the will of this one state power. Here, therefore, the principle would hold that the later law repealed the earlier. With respect to laws passed in the form of territorial legislation, in distinction from imperial legislation for Alsace-Lorraine or territorial laws passed in the way of imperial legislation, this principle does not apply, so far as the relation of such territorial legislation to imperial legislation is concerned. Laws passed in the form of territorial legislation, *i. e.* laws issued by the emperor with the consent of the Federal Council and the Territorial Committee, do not take precedence of earlier imperial laws touching the same subject, and can neither amend nor repeal them. For in section 2, clause 2, of the law of May 2, 1877, it is expressly declared that laws affecting territorial matters, passed in the way of imperial legislation, can be amended and repealed only through imperial legislation. This clause corresponds to the legal relation between the legislative factors in both forms of legislation. An imperial law for Alsace-Lorraine, a law touching matters purely territorial passed in the form of imperial law, issues, like every imperial law, from the Federal Council with the consent of the Imperial Diet. The sanction is imparted by the Federal Council. A law in Alsace-Lorraine, passed in the form of territorial legislation, issues from the emperor, the consent of the Federal Council and that of the Territorial Committee having been previously obtained. In the first case, the legislation for Alsace-Lorraine is immediate. In the second case it is mediate. That is to say, in the first instance we have an immediate expression of the will of the state power. In the second, we have a mediate expression of that will through the emperor, into whose hands the state power (with the reservation contained in section 2 of the law of May 2, 1877,) has been placed. The two forms of legislation, therefore, rest upon two distinct bases: the one upon original and the other upon derivative power. Where, as in this latter case, the delegated power is limited by an express reservation, the exercise of the reserved power by the imperial legislative body must take precedence of all action on the same subject by the holder of the delegated power.

(3) By the provisions of the law of June 25, 1873, section

8,¹ the emperor is authorized, until such time as the matter may be regulated by imperial legislation; to issue, with the consent of the Federal Council, ordinances having the force of law.² In the exercise of this right, the emperor is subjected to certain limitations. In the first place, such ordinances may contain nothing contrary to the constitution or to the imperial laws in force in Alsace-Lorraine, nor may they relate to such matters as require, by the provisions of section 3, clause 2, of the law of June 9, 1871,³ the consent of the Imperial Diet for their determination. In the third place, such ordinances must be laid before the Imperial Diet at its next meeting for its action. Should ratification be refused by the Imperial Diet, the ordinance goes out of force. The assent of the Imperial Diet on the other hand, raises the ordinance to the dignity of a law, which cannot be amended or repealed by subsequent ordinance, but by law only.⁴ This power of issuing provisional ordinances having the force of law may be exercised only when the Imperial Diet is not in session. The fact that the Territorial Committee may be in session is irrelevant.⁵

The law of July 7, 1887,⁶ provides that where an imperial law has been introduced into Alsace-Lorraine, and such law is subsequently amended through imperial legislation, the amendment may be made effective in Alsace-Lorraine by an ordinance of the emperor, with the consent of the Federal Council, and the date from which such amendment shall go into force may be fixed in the ordinance. The power of the emperor to issue ordinances of this nature is not subjected to the provisions of section 8 of the law of June 25, 1873. These ordinances may be issued while the Imperial Diet is in session and need no subsequent ratification by that body. They are not in any sense provisional "ordinances with temporary legal force", but represent an exercise of delegated power of legislation.

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¹ *RGBI.* 1883, p. 161; *GBI. für Elsass-Lothringen*, 1873, p. 131.

² "Verordnungen mit interimistischer Gesetzeskraft."

³ Matters involving the assumption of loans or guarantees for Alsace-Lorraine, through which a burden is laid upon the empire.

⁴ Compare Leoni, *op. cit.*, p. 164; Laband, vol. ii, p. 257.

⁵ See in this connection the Stenographic Reports of the Imperial Diet 1877, vol. i, p. 281; And cf. remarks of Laband, vol. ii, p. 257. ⁶ *RGBI.* 1887, p. 377.

THE REFORM OF PROCEDURE IN THE FRENCH CHAMBER OF DEPUTIES

THE reform of procedure recently begun in the French Chamber is not immediately important, but suggests significant developments. Originating in the legislative incapacity of the Chamber, the early attempts at reform were leveled at the peculiarly inefficient committee system and at recognized abuses of the individual initiative. The failure of the first great effort demonstrated the difficulty of the question and made evident the necessity of proceeding more slowly. The committee system was reformed and the individual initiative limited in budget amendments, but the deputy was allowed to retain much of his old time importance. This rendered the reforms ineffective. But the necessity of limiting the discussion of interpellations resulted in ministerial control and a limitation of the individual initiative which will make effective reforms possible.

I. Legislative incapacity and beginnings of reform

The rules of procedure adopted in 1876 by the newly created legislative chamber were based upon the rules used by the Assembly of 1848. Technically all connection with the Chambers of Louis Napoleon and Louis Philippe was avoided, but the break with the past was more apparent than real. The republic of 1848 was moribund at its foundation; its Legislative Assembly was the weakest branch of the government and never enjoyed much authority. The rules of this Assembly were the embodiment of the parliamentary experience gained under Louis Philippe, but the spirit of '48 gave them a decidedly republican tone. The monarchy of July gave the present republic not only its body of rules but has also furnished the most notable precedents for the interpretation of these rules.¹ The

¹ Poudra et Pierre, *Traité de Droit Parlementaire* (Paris 1879), *passim*.

reference to the republic of 1848 serves merely to obscure the origin of the rules.

The present Chamber of Deputies, thus equipped with the rules of the Chamber of Louis Philippe, was designed to occupy a very different place in the government. The ministers of Louis Philippe were independent of the Chamber; legislation was prepared outside of the Chamber and submitted for an approval which was little more than a form. The Chamber was expected to confine itself to discussion and criticism. It was designed to be inefficient. Under the republic the Chamber was to occupy a more important position. The ministers were to be really responsible to it. Legislation was to be prepared by the Chamber itself. For such a body the rules of the monarchy of July were manifestly inadequate.

Reforms in the rules were proposed in 1882, 1885, 1889 and 1893. Each new legislature added strength to the group of reformers, and finally in 1898 many candidates were obliged to pledge themselves to a reform of procedure. The constituencies had been brought to a keen appreciation of the need of reform. The political journals kept up the agitation, and one or two articles appeared in the reviews. As soon as the legislature assembled numerous projects for the reform of the rules were submitted by individual deputies. A committee was appointed to examine the plans submitted and to draft a comprehensive measure.¹

Whatever rule any individual réformeur proposed to alter, all were seeking the same end. The people desired to have a legislature that could produce good legislation. Civilians complained of the lack of it upon many important subjects; administrators were constantly hampered by the obscurity of the text of the laws sent them from Paris; financiers criticised severely the repeated deficits.

The unhappy situation depicted in the complaints of the reformers may be traced to the organization of the Chamber,

¹Chambre des Députés, *Documents Parlementaires*, 1898-99, p. 1492. The Parliamentary Documents and Debates are published in two forms: as part of the *Journal Officiel*, and in the *Annales Parlementaires*. Both publications are printed from the same plates.

which was defective in the impossibility of effective control by responsible leaders, growing out of the complete supremacy of the individual deputy. The French parliamentary writers recognize this, but they feel that these principles are their great contribution to parliamentary thought. "The object of the rules," says M. Pierre, "is not to present theorists with an attractive code of procedure; the rules are designed to guarantee complete freedom to all opinions and to all members."¹ Even the reformers do not criticise the principle, although they desire to prune away certain "abuses" of individual initiative.² The strong, independent government of Louis Philippe, the democratic spirit of '48, enable us to understand the attitude of the Frenchman towards the individual deputy. The impotence of the legislature at that time concealed thoroughly the evils which have since appeared from the application to a legislature of rules suited for a debating society. But adherence to the past can now be purchased only at the price of continued legislative impotence, which conditions no longer necessitate nor permit.

As party organization and ministerial influence was feared, the arrangement of business was left to the Chamber as a whole. The ministry was given no right to control the time of the Chamber in any respect, nor was any one else made responsible for a systematic arrangement of business. The ministry proposed its measures, the deputies brought in project after project, but no order of the day was arranged for any considerable period. At the close of each sitting the order of business for the following day was prepared: sometimes a committee demanded time for its report, more often there was no formal motion but merely shouts from groups of deputies. The order of business prepared in this haphazard manner was hedged about with few securities. A bill might be brought up the next day under the urgency motion, or an interpellation might be discussed to the exclusion of all or a part of the business set down the night before for discussion. In the spring of

¹ E. Pierre, *La Procédure*, Paris, 1887. Cited, C. D. Doc. Parl., 1898-99, p. 1492.

² C. D. Doc. Parl., 1898-99, p. 1520.

1902, for instance, the debate on the budget was held up for three hours by a debate upon an urgency motion, although the Chamber had been assembled in an extra sitting for the express purpose of getting on with the budget.¹ This lack of organization was perhaps of little moment during the reign of Louis Philippe, but under the republic it was fatal.

The endeavor to avoid ministerial influence under the monarchy of July had produced also an elaborate method of choosing the special committees to which each bill was sent for consideration. The system worked well enough as long as the avoidance of such influence was alone necessary, but the clumsiness of the system became apparent at once when the legislature of the republic endeavored to prepare legislation in these committees. A suggestive illustration is to be found in the history of the committee which prepared the project for the reform of the rules of 1898. The committee had been chosen in the usual manner, three members from each of the eleven bureaux, but it was not a very representative body, as the bureaux had for the most part elected the deputies who were interested in reform, so that the committee was on the whole more favorable to reform than the Chamber. The committee worked hard, studying English and congressional procedure, examining and weighing the numerous schemes which had been sent in by the deputies, studying the history of the rules called in question and the various amendments suggested in the past. But all this labor was practically wasted, because the committee did not represent the majority in the Chamber. Two or three preliminary articles of secondary importance were passed, but the first important article of their project was rejected. An amendment which was practically a new article was adopted by a vote of 281 to 229.² The question was recommitted, but the committee decided to drop the project of reform. The budget always has such an experience. The proposals of the ministers receive scant attention from the committee on the budget, which produces an entirely different scheme; then the report of the

¹ Cited, C. D. Débats Parl., Dec. 1, 1902, p. 551.

² *Ibid.* Nov. 15, 1898; Doc. Parl., 1898-9, sess. extra., p. 303.

committee is made over by amendments in the Chamber. Two budgets are thus elaborately prepared to be thrown away and the final budget is the result of haphazard amendments made in the Chamber by irresponsible individual members. The time and effort wasted in the Chamber is beyond calculation.

Intelligent legislation is made difficult by the absence of responsible persons charged with the direction of business. Many bills pass because there is no systematic opposition. If no prejudices are aroused almost any bill can be passed, for the time of the Chamber is at the command of the individual deputy, and indifference makes it possible to secure the necessary votes. Opposition left to individual deputies becomes spasmodic. The fate of a reform proposed June 16, 1903, illustrates admirably the lack of systematic opposition. The partial suppression of the urgency motion was before the Chamber. Several members had examined the scheme of the committee and intended to oppose the first section of the proposal. But they did not follow the debate carefully and the section was passed before they realized what was being done. One of them rose to speak in opposition to the article that had just been passed, only to be politely informed by the president that the next article was then before the Chamber. A few moments later, improving the opportunity offered by an amendment to the other article of the committee, another member of the hostile group moved the recommitment of the whole scheme. He said that he and his friends could not accept "the vote upon article 34, which though perhaps not an unfair surprise, had taken place in the midst of great confusion. There is no doubt that we vote daily upon questions which we do not hear. Too often confused debates do not give us a clear understanding of the question at issue." The motion was carried and the reform of urgency postponed.¹

The principle of individual initiative was also responsible for much useless consumption of time by deputies who secured the floor to propose some pet scheme or to bring to the attention of the ministry some unimportant incident which had affected

¹C. D. Débats Parl., June 16, 1903, p. 411.

their constituents or shocked their own sensibilities. The idea that the individual deputy should be given every opportunity to propose legislation and voice grievances had made it essential to afford him every facility for securing the attention of the house. The deputy was convinced that it was his duty to take advantage of these opportunities.

Every deputy has the right to enter the tribune at the beginning or in the course of a sitting, to deposit a bill or resolution, to read an exposition of his motives in making the proposition and to invite the Chamber to declare urgency. I admit that in practice this privilege has been abused. Whenever we have an idea for a bill, as the result of our work or our imagination, we willingly suppose that the country could not exist if our bill is not passed immediately.¹

Deputies thus impressed with their obligations to their constituents were able to make the Chamber thoroughly inefficient as a legislative body.

The extensive rights given the individual deputy made the group system possible. As each deputy had in his own right all the privileges of the Chamber, he did not need the support of a closely organized party to present his views to the Chamber. The rights of the individual had been guaranteed with the express purpose of protecting the deputy from the tyranny of party. No man was to be obliged to swallow some of his convictions in order to give the country the benefit of his talents. All were to participate freely in the labor of preparing legislation. Deputies holding similar views upon great questions might properly sit together and organize as a group with a staff of elected officers. But even when in the majority the deputy must act by right of his general privileges as member of the Chamber and not by virtue of any privileges conferred upon him as member of a party. The group could thus offer to non-members no inducements beyond fellowship with similarly minded men and could exert no control over members, because each as an independent could enjoy privileges as great as were in the possession of any other member of the Chamber.

The reformers faced a system which really needed to be

¹ C. D. Débats Parl., June 16, 1903, p. 407.

entirely remodeled. But they had no such intention, feeling that all would be well if more time could be secured for legislative work. The substitution of standing committees on specified classes of legislation for special committees on each bill would make legislation more consistent and save much time. Many bills could be saved by securing a more systematic arrangement of business. The financial disorder could be remedied by restricting the right of individual members to propose amendments to the budget. More time for legislation could also be secured by preventing deputies from getting the tribune under cover of the urgency motion. Interpellations might be limited to one day per week. None of these changes, said the reformers, need disturb the great principle of individual initiative, but the abuses of a sound principle must be removed.

II. *The comprehensive scheme of the committee of 1898*

The abuse of individual initiative foremost in the minds of the reformers was connected with the urgency motion. This motion was primarily intended for use on such extraordinary occasions as required immediate legislation. The deputy proposing legislation of this character was permitted to mount the tribune to explain briefly the purport of his bill and the necessity for urgency. If the motion was passed, one of the readings of the bill was omitted and the committee stage governed by special rules designed to accelerate the work. But this extraordinary procedure was soon applied to nearly all measures brought before the house. In the preliminary stage of the process was discovered a most admirable opportunity of getting the tribune for any matter relevant or irrelevant. These unexpected developments made the status of the urgency motion peculiar, and the reformers felt that it might properly be subjected to drastic reform, as it had conferred upon the deputy powers which no one had intended to give him. The members who made most frequent use of the motion, however, declared that it was the bulwark of the liberty of the individual deputy.

The committee of 1898 proposed to meet the peculiar situation in the most logical way. The urgency procedure, which had been so regularly applied to all measures, should be made

the ordinary procedure. The second reading was abolished except when demanded for a law whose importance warranted the additional formality. As this procedure no longer needed the preliminary explanation from the tribune, the individual deputy, would, in the future, be unable to abuse the patience of members with his passionate harangues upon subjects in which the Chamber felt no interest.¹

But in other matters the reformers were more conservative, as they were anxious to "respect the absolute independence of the deputy." Yet the complaints of obscure and contradictory texts and of confused budgets, which were all directed against the freedom of amendment enjoyed by the individual deputies, obliged the committee to devise restrictions upon the individual initiative. The plan of the committee in regard to the amendment of ordinary laws is singularly obscure and inconsistent with the professions of the report. The committee speaks of the evils of having amendments voted before they are printed and distributed, commenting upon a case in which a written amendment was passed up to the president, circulated between the minister and the reporter of the committee and adopted straightway, though no one else had any idea of its contents. The ordinary procedure upon amendments was indeed made more strict, but the irregular proceeding so severely criticised in the report was to be permitted as an extraordinary procedure. The ordinary procedure proposed by the committee required that every amendment submitted to the Chamber should be printed and distributed two days at least before the discussion of the article to which it referred, and that no amendment should be brought before the Chamber unless it had been accepted by the committee charged with the bill.²

Even in regard to the budget the private member received altogether more consideration than he deserved. Amendments to a section of the budget were to be deposited before the beginning of the debate upon that section. Amendments increasing expenses or decreasing receipts must be accepted by a vote of the Chamber. The amendments received were to be sent to

¹ C. D. Doc. Parl., 1898-9, p. 1504-5.

² *Ibid.* p. 1526.

the committee and embodied in a comprehensive report upon amendments, which should be submitted to the Chamber before the final vote upon the budget. No division lists for votes on the budget were to be published, lest the deputies should be impelled to vote for injudicious expenditure desired by their constituents.¹

Interpellations also consumed much time which might be more advantageously used for the consideration of bills. The committee proposed to limit interpellations to one day per week.²

The reform of the actual legislative machinery really required not only the limitation of the old principle of individual initiative but the adoption in some degree at least of a new principle, the regulation and control of business by responsible persons. The issue was most clearly presented in regard to the regulation of the order of the day. No one, however, was prepared for an innovation. The necessity for a more systematic arrangement of business was perceived, but the English solution of the problem did not commend itself to the committee. They hoped to improve the order of the day by having it prepared for a week, instead of for a single day. This should take place at the last sitting of the week and, once prepared, should be changed only upon the motion of the ministers or forty members known to be present in the Chamber.³

In the plan of the committee for the organization of the standing committees as a regular part of parliamentary machinery, the old desire to protect and exalt the private member is more apparent than ever. The method of choosing the committees was the most difficult matter to settle, as great questions of principle were involved. Election by the Chamber as a whole would in the end make the committees reflect the opinions of the majority; the choice of committees by the bureaux would preserve the excessive rights of individual deputies which had been responsible for the unfortunate working of the old system. At this time the first alternative received scant consideration and the committee spent most of its time deciding how

¹ C. D. Doc. Parl., 1898-99, p. 1526. ² *Ibid.* p. 1526-7. ³ *Ibid.* p. 1519.

the privileges of the individual deputy might best be preserved. MM. Lanessan and H. Maret proposed to allow each deputy to choose his committee for himself. It was admitted that this would be difficult to apply, because some committees aroused more interest than others and would infallibly attract more than their share of members. The committee, however, declared that these practical difficulties should not be taken too seriously. "In examining the working of these systems, voluntary enrolment upon a register and election by the bureaux, we arrive at the conclusion that the second system is the more liberal, because it offers most security for the rights of minorities."¹

The term of the committees was finally settled by an appeal to the same principle. A four-year term received little support, as it would be likely to deprive the younger deputies of influence. Entering the Chamber without experience, they would find it difficult to secure a good committee, and if the committees were appointed for four years they could not easily secure a more influential position. Deputies chosen in bye elections, too, would not be able to get a place upon any committee.² There were to be eleven committees of thirty-three members each.³

The measure of reform proposed by the committee was too moderate to overcome the defects which really existed. But even this measure was in advance of the sentiment of the Chamber. The initial defeat came upon one of the most moderate clauses in the article on standing committees. The clause limiting membership in the new committees to thirty-three was criticised as an invasion of the rights of the individual deputy, and an amendment providing for the distribution of all the members of the Chamber among the committees was adopted by a vote of 281 to 229.⁴ The article was recommitted, but the committee ultimately decided to drop the question of reform,

¹ C. D. Doc. Parl., 1898-9, p. 1497.

² *Ibid.*

³ The committees were: Civil and Criminal Legislation; Departmental and Communal Administration; Public Instruction and the Fine Arts; Army; Navy; Labor; Insurance and Rural Aid Societies; Railroads; Tariff; Agriculture; Commerce and Industry.

⁴ C. D. Débats Parl., Nov. 15, 1898.

not preparing a report on this article nor bringing the rest of its scheme before the Chamber. The comprehensive measure was a complete failure.

III. *The reform of standing committees*

The reform movement was not, however, doomed to failure, simply because the scheme of the committee had been dropped. Attempts to reform particular abuses had already been made, and the comprehensive plan was abandoned largely because the complexity of the situation rendered it advisable to deal with one difficulty at a time. A reform of the committee system had already made some progress. A standing committee on the army had been appointed March 28, 1882, charged with all propositions concerning the numbers, equipment and inferior officers. Opposition to this committee was at first very bitter. Dangers of every description were predicted. But a committee on the tariff was appointed January 20, 1890, without arousing much hostility. Finally, in the sixth legislature of the republic (1894-8), standing committees were recognized as a useful parliamentary device. Ten committees, composed of thirty-three members, were nominated in the bureaux at various times.¹

Standing committees did most of the work in the legislature which assembled in 1898, there being sixteen such committees in service in the course of that legislature and only seventy-one special committees. Of 1356 projects submitted to committees 1219 were considered by standing committees and only 137 by special committees.² The meetings of the standing committees were thinly attended. Ordinarily only eight or ten members were present.³ Many members were inclined to declare that

¹The Committees were: Judicial Reform; Tariff; Labor; Insurance and Aid Societies; Army; Navy; Railroads; Accounts and previous Budgets; General Reform of Taxation; Colonies. C. D. Doc. Parl., 1898-9, pp. 1496-7.

²C. D. Doc. Parl., Oct.-Dec., 1902, p. 270. Committees were: Tariff, June 23, 1898; Labor, Insurance and Aid Societies, Agriculture, Railroads, June 27, 1898; Judicial Reform, Civil Legislation, July 4, 1898; Army, Navy, Colonies, Nov. 11, 1898; Departmental Administration and Decentralization, Dec. 12, 1898; Commerce and Industry, Criminal Legislation, Fiscal Legislation, Dec. 13, 1898; Public Health, Jan. 16, 1900.

³C. D. Débats Parl., Nov. 17, 1902, p. 343.

the committees were a failure, but most deputies were willing to admit that the standing committees did better work than the special committees. The principle had been accepted but the details had still to be worked out.

When the eighth legislature assembled in the fall of 1902 the constitution of the standing committees became a pressing issue. The Chamber was unwilling to create special committees and yet seemed at first unable to agree upon the constitution of the necessary standing committees. Projects were frequently laid aside to be committed to a standing committee which was to be appointed later. But this could not continue indefinitely. In October and November the Chamber had scarcely enough legislative material to keep the order of the day full. More than once the president was obliged to announce at four in the afternoon that there was no more business ready to come before the Chamber. A Monday sitting was omitted because there was nothing to do.¹

The constitution of the standing committees was taken up November 17. The scheme laid before the Chamber provided for the organization of fifteen standing committees, among which all the deputies should be divided. A deputy acquired membership by filing a nomination paper signed by fifteen fellow deputies. A committee should be organized for business by the president of the Chamber as soon as twenty members were enrolled. If more nomination papers were filed for a committee than were necessary to give the committee its full quota, the candidates were to be selected according to the date of their nomination papers. No deputy was to belong to more than one standing committee.²

The project of the committee did not meet the wishes of the Chamber and was speedily made over by amendments. The provision for the constitution of committees by nomination papers was lost by a vote of 412 to 149. Defeated upon its own proposition, the committee gave its support to a clause providing for the election of committees in the Chamber by a

¹ C. D. Doc. Parl., 1902, sess. extra., p. 269.

² C. D. Débats Parl., Nov. 17, 1902, p. 337.

general ticket. This plan, together with a compromise scheme providing for the election of some committees and the appointment of others in the bureaux, was defeated by the conservative deputies. The Chamber finally decided to appoint the committees in the bureaux, while the deputies in favor of election were appeased by the specific application of article 17 of the règlement to the new standing committees. This will make it possible to elect any particular committee by *scrutin de liste*, and although this has not yet been done, it may be the means of gradually getting rid of the bureaux. The other articles of the project of the committee were not opposed, though there were some changes in the list of committees.¹

The provision that a deputy should belong to only one committee was found to be impracticable and was never really observed. An amendment was passed in January permitting a deputy to serve on not more than four standing committees. If a deputy ineligible on account of this rule is chosen for a fifth committee the president of the Chamber shall allow him a week in which to designate the committees to which he desires to belong. If he indicates no preference, the last election is declared null.² In June, 1903, the rules for the organization of the committees were amended.³

The change in the committee system has unquestionably produced good results, but it has not solved the problem which

¹ The final list of committees was: Tariff; Labor; Insurance and Aid Societies; Agriculture; Public Works, Railroads and Means of Communication; Judicial Reform, Civil and Criminal Legislation; Army; Navy; Foreign Affairs, Protectorates and Colonies; Education and the Fine Arts; Administration, general, departmental, communal; Worship and Decentralization; Commerce and Industry; Fiscal Legislation; Public Health; Posts and Telegraphs; Economical Reform. C. D. Débats Parl., Nov. 17, *passim*.

² C. D. Débats Parl., Jan. 15, 1903, p. 47.

³ Art. 25 of the règlement was amended to read: "The committees shall be assembled without delay to elect their staff of officers. They shall also elect by a similar process the reporters charged to render account of the work of the committee. Every standing committee shall deposit upon the table of the Chamber at the beginning of each session a summarized account of its work. Every project sent to a committee shall be reported within six months of the day it was received. If this is not done, the author of the project may demand that it shall be placed on the order of the day. C. D. Débats Parl., June 16, 1903, p. 413.

the reformers have been trying to meet. Other phases of parliamentary procedure must be reformed before the committees can be completely organized. They are still entirely independent of each other, and there is only the remotest possibility that they will be in harmony with the majority in the Chamber, although they will not perhaps be quite such radical bodies as were the special committees. The bureaux will now have to elect members to consider certain classes of legislation, not to discuss specified bills. The task of selection will not be as simple as it was, for the deputies will not have such clearly defined interests. Formerly, those members of the bureau who were interested in the bill were selected for the committee. Deputies with radical views on the subject were generally most interested in the bill, and the committee when finally assembled was likely to be more radical than the Chamber. The old method of selection will gradually be abandoned; the bureaux will pay more attention to party and less to personal interests. The committees will be more permanent and will make more of an effort to work in sympathy with the majority in the Chamber. But however important these changes may be, the Chamber cannot be properly organized until more limitations have been imposed upon the individual initiative.

III. Limitation of the individual initiative

The necessity of such limitation was clearly perceived by the committee of 1898. They did not wish to abandon the principle but agreed that it would be well to remove abuses. "It is impossible," said the committee,

to find a more marked contrast between two institutions than that presented by the House of Commons and the Chamber of Deputies in the individual initiative of the latter and the ministerial initiative of the former. . . . Even if there are abuses of the ministerial initiative in England we must nevertheless suppress the abuses of the individual initiative, which are only too manifest in our own Chamber.¹

The wide-spread desire for legislation creates public opinion

¹C. D. Doc. Parl., 1898-9, p. 1520.

upon the subject. The journals take to task the deputies who delay legislation by abusing the time of the Chamber and prevent the despatch of business by meddling incessantly with the order of the day. M. Méline is praised for his systematic arrangement of business and his successful efforts to prevent deputies from wasting the time of the Chamber.¹ The public is beginning to lose patience with the deputy, transferring their sympathies to the ministers. It is perhaps no more than a tendency as yet, but it is highly important, for when the idea that the Chamber ought to be "run" by the ministers and the majority has gained acceptance, an adequate limitation of the individual initiative will be possible.

In the Chamber the movement is directed against the urgency motion, the right of the deputies to amend the budget and unlimited discussion of interpellations. The reformers intend to do no more than limit these abuses, but their opponents rightly fear that the principle will ultimately be abandoned.

The committee of 1898 proposed to abolish urgency procedure but their plan failed and nothing more was done at that time. In 1902, in the new legislature, the subject was revived. M. Paul Meunier proposed (Nov. 28) that demands for urgency procedure should be allowed only upon Thursday, when they should follow the presentation of a bill.² The proposition of M. Lebrun is more significant. If urgency is demanded by the ministry the Chamber shall decide at once whether it shall be granted. If urgency is demanded for a proposition of a private member the demand must be placed in the hands of the president at the beginning of the sitting. The president announces the demand to the Chamber, but the vote is postponed until the close of the sitting.³ The deputy has no opportunity to waste the time of the Chamber with a long speech. M. Fabien-Cesbron would have the Chamber permit the immediate discussion of a proposition only upon the request of the ministry.⁴ Similar schemes were proposed by others.⁵

¹C. D. Doc. Parl., 1898-9, p. 1519.

²Ibid. 1902, sess. extra., p. 413.

³C. D. Débats Parl., Dec. 1, 1902, p. 551.

⁴Ibid. p. 552.

⁵C. D. Doc. Parl., 1902, sess. extra., p. 456.

These various propositions were duly committed and a scheme was reported June 16, 1903. In addition to the reform of urgency the committee proposed to amend the procedure upon resolutions and motions, cutting out an opportunity for a speech that was frequently used. For the reform of urgency, the plan of M. Lebrun was in the main adopted.¹

The debate upon these resolutions is notable for the clearness with which the issue is stated by M. Gauthier de Clangy. He recognized that the rights of the individual deputy were seriously threatened and that the motion amounted to an abolition of urgency. The reporter of the committee made a great effort to show that it had sought only to cut away abuses. Urgency had been used so constantly in the passage of bills that the committee had endeavored to retain that element of the procedure, although they desired to prevent the use of urgency for reading motions which no one heard and for discussions which no one listened to. But when the debate had reached this point a misunderstanding became apparent which wrecked the entire project. The article upon resolutions and motions had been passed without debate, through the carelessness of the deputies who intended to oppose it. They now discovered their oversight. Unable to gain satisfaction in any other way, they utilized the opportunity presented by an amendment of the article on urgency and moved the recommitment of the whole report. The motion was carried by a considerable majority (299 to 259).² The committee did not report again and the question is not likely to be revived until the next legislature.

The disastrous effects of individual initiative were most clearly seen in the remodelling of the budget. The real cause of this extensive change by amendments lay in the fact that the budget committee was more or less out of sympathy with the majority, because the selection of the committee by the bureaux gave the majority no assured control of the committee. The ease with which amendments could be made by members in their individual capacity enabled the majority to recast the budget to suit itself,

¹ C. D. Débats Parl., June 16, 1903, p. 406.

² *Ibid.* p. 411.

so that little objection was made to the selection of the committee in the bureaux. But the remodelling in the Chamber was fatal to the balance and proportion of the budget, as the freedom of amendment not only enabled the majority to recast sections but also exposed the budget to the whims of individual deputies.

The committee of 1898 had proposed to limit the rights of the individual deputy in regard to such amendments. After their scheme was abandoned nothing was done for a year or more. The subject was finally revived by MM. Rouvier and Berthelot. Their proposals were moderate and were accepted by the Chamber.

No amendment to the budget nor any additional article tending to increase expenditure may be deposited after the three sittings which follow the distribution of the report on the chapter concerned. No proposition tending to increase salaries, indemnities, pensions or to create new offices or pensions or to extend them beyond their present limits may be made in the form of an amendment or additional article to the budget.¹

Proposals of two sorts have been made to modify these new clauses: some designed to extend the principle of limitation of amendments to clauses decreasing or transferring expenditure from one purpose to another; others permitting any amendments which contain provisions for meeting any increased expenditure called for, or for procuring revenue equivalent to that raised by the taxes whose abolition is proposed.¹ But none of these schemes have received much attention and further reform in regard to budget amendments is not immediately necessary.

The interpellation represents the old procedure in its entirety, deriving importance from the legislative impotence of the Chamber and showing most clearly the power of the individual deputy. At any time, during any session, the deputy could interpellate the ministers, and he must be allowed to "develop his interpellation" within a month, unless it concerned foreign relations. Every phase of administration was examined through

¹C. D. Doc. Parl., 1902, sess. ord., ii, 575; *ibid.* sess. extra., 511; *ibid.* sess. ord., i, 305; *ibid.* sess. ord., ii, 568.

these interpellations, which were customarily given the right of way over almost everything else. The critical function thus displayed was the one thing for which the old procedure was adapted. It was the only phase of parliamentary life which the French politicians really understood, and was the only thing which the Chamber did thoroughly. Any change in the use of the interpellation is thus likely to be of great significance, as it involves a reform of the most important part of the old superstructure, the bulwark of the liberty of the individual deputy.

The extent to which the interpellation was the embodiment of the old procedure exposed it to attack at once. The early part of the attack goes hand in hand with the endeavor to build up the new system of standing committees, and though the movements are separate the connection is intimate, as the change in the old procedure must make considerable progress before the new committee system can be effectively organized.

The limitation of interpellations to one day per week was first proposed by M. Flandrin in 1894. He suggested that legislative work should be taken up Mondays, Tuesdays and Saturdays and that interpellations should be discussed only upon Thursdays.¹ The main object here was not so much to limit the right of interpellation as to obtain more time for legislative work. The standing committees were then being organized one at a time, and it was considered necessary to secure more time for the consideration of legislative projects.

The discussion of interpellations was indirectly limited in March, 1897, by a proposition moved by M. Marty which provided that Mondays, Tuesdays and Thursdays should be exclusively devoted to the discussion and passage of laws. This resolution was carried despite some vigorous opposition² and other resolutions were subsequently passed reserving Friday for the discussion of labor laws and Saturday for interpellations.³ But these were merely sessional orders and were not placed in the *règlement*, so that the rule lapsed in July, 1898, when the sixth legislature disbanded.

¹ Cited by Gauthier de Clangy, March 18, 1904. C. D. Débats Parl., i, 1003. I have been unable to find the original record, as the Débats and Documents are not indexed until 1897.

² C. D. Débats Parl., March 13, 1897, p. 741. ³ Ibid. June 24, 1897, p. 1651.

The comprehensive scheme of reform provided for the limitation of interpellations to Fridays, but when the scheme was dropped nothing was done for some time. Yet there was a tendency to establish the Friday rule as a custom in the regular session of 1899. In January and May, Fridays were used for interpellations and there were traces of such a rule in February, but nothing of the kind appeared in the extra session of 1899.¹ A resolution of M. Salis, May 31, 1900, reserving Friday for interpellations, was passed.² In some respects this seems to be an amendment of the règlement, but when the Chamber assembled in the fall for the extra session, Waldeck-Rousseau treated the matter as if it were still an open question. He proposed that some sitting should be set apart for interpellations, and after a very confused debate the Chamber agreed to devote Friday afternoons to them.³ This vote was admitted to be no amendment of the règlement, but there has been no other vote since that time. The rule has not been observed very scrupulously, as the ministry or budget committee do not hesitate to use the day. Nevertheless the Friday rule seems to be accepted as a custom. The rule has resulted in one illegal practice, the postponement of the discussion of interpellations for more than one month. This article of the règlement remained a dead letter without even evoking protest until March 18, 1904, when M. Gauthier de Clangy made a vigorous speech denouncing its non-observance. He carried a resolution inviting the officers of the Chamber to enforce the one-month rule. The president of the Chamber extended his support to the motion, but the resolution seems to have had no effect.⁴

The main object in limiting interpellations to Friday was to secure more time for legislative work, the ministry having no thought of dodging interpellations or arranging them in any way. They were to be arranged chronologically and each was to be taken up in turn. But this rule proved to be impracticable, for there were two distinct classes of interpellations: some criticised the important phases of ministerial policy;

¹ C. D. Débats Parl., 1898-9, *passim*.

² *Ibid.* 1900, sess. ord., p. 1343.

³ *Ibid.* 1900, pp. 2019-21.

⁴ *Ibid.* 1904, i, 1002-3.

others were unimportant, wasting time and undermining the authority of the ministers. The interpellations of the first class were the only means in the French Chamber of enforcing responsibility. The disorganization of the Chamber and the impotence of the ministry made it difficult to enforce responsibility for legislation. The budget is no more the work of the ministers than it is the work of the budget committee. The budget actually passed is different from either of the preliminary schemes. Everyone has a hand in its making and no party has had enough control to make it properly responsible. The non-partisan character of committees has the same effect upon other legislation. It is thus impossible to hold the ministers responsible for the details of legislation. The traditional use of the interpellation as a means of criticism gave the deputies an admirable instrument for enforcing responsibility of a general character. An issue was brought up in an interpellation, and if the ministers could not command a majority it was not likely that they could pass any legislation on that subject. The danger lay in the inability of the ministers to avoid defeat upon a matter which they did not really consider a question of ministerial policy, but which could be turned against them. Such interpellations and those which merely wasted time because of their unimportance, made the general right dangerous, although the interpellation might be shorn of all its real danger if the ministers could decide which ones should be discussed. When interpellations were limited to one day per week the ministers were obliged to take control in order to devote the time to such as really criticised some point of government policy. But the ministers had no deliberate intention of assuming new responsibilities for the arrangement of business and the custom of controlling interpellations developed slowly.

Under M. Méline's ministry, when the rule was first applied, there was little arrangement. The time for interpellations was limited, the discussion of some was postponed, the deputy did not feel entirely free to interpellate the ministers and but few if any were indefinitely postponed and dropped.¹

¹C. D. Débats Parl., June 24, 1897, p. 1651. Doc. Parl., 1898-99 p. 1519. Interpellations may be followed in the lists published in the regulation of the order of the day, Thursdays.

When Waldeck-Rousseau met his first Chamber, further development of ministerial control had become necessary. The extraordinary session held in the fall of 1900 had an unusual amount of legislative work to finish. A list of interpellations long enough to occupy the greater part of the session was also awaiting discussion. The budget was not very far advanced. Reforms were expected of the Chamber. At the opening of the session, Waldeck-Rousseau presented a scheme for the organization of business which was accepted with some amendments, as the Chamber preferred morning sittings to sitting on Saturday. Such a systematic proposal from the ministry was in itself an innovation and it indicated a determination to get something done which resulted in further innovations.

At first there was no attempt at arrangement. By general consent the interpellation on the general policy of the ministry was discussed at once, but after that the strict order was followed until late in December. At the request of the committee on the budget an interpellation was inserted near the head of the list (Dec. 20); an interpellation upon foreign policy was similarly inserted December 28, this time at the suggestion of the ministers. In the session of 1901 the ministry began to arrange the head of the list quite regularly, especially during January and February. They also began to select such interpellations as they desired to discuss and brought them along quickly. If the Fridays regularly set apart did not suffice other days might be used. A vote of the Chamber was required for everything, but the lack of an organized opposition made it easy to carry any definite proposition of this sort. The deputies did not feel obliged to vote with the ministers, perhaps, but their interest in the interpellation secured their vote.

The extent to which this process of filling up the head of the list might be carried is admirably illustrated by the history of the interpellation of M. Pastre upon the removal of several Socialists from university positions. His interpellation was at the head of the order of the day for June 28, 1901. The discussion of the budget postponed debate until the fall session. Other interpellations were discussed in the fall, and that of M. Pastre was only next to the head of the list at the close of the

session. When the legislature assembled in January, 1902, the interpellation of M. Pastre was again displaced. Those slipped in ahead of his were disposed of quickly, however, and his was finally discussed January 16 and 31. The important interpellations had been discussed and the government left the interpellators to themselves. Thirty or forty still remained to be taken up, but most of them were dropped, as the long postponement had rendered them obsolete.

Under the Combes cabinet the arrangement of interpellations became more marked. Some of a non-political character were discussed, yet the debate centered on matters of political importance. The policy begun by Waldeck-Rousseau was carried out more completely and logically. As he resigned in June, a few weeks of the ordinary session remained, but no interest was taken in interpellations so late in the session. When the Chamber assembled in the fall there was a long list which had been sent in during the recess. M. Combes took the initiative October 14, proposing to group all the interpellations upon the decrees lately issued to regulate the religious houses. This group was placed at the head of the order of the day. Those on strikes were collected in a group and given the second place. Those addressed to the minister of war and one on the Humbert affair were to follow. These discussions occupied all the time devoted to interpellations during October and November. M. Combes again asserted himself in regulating the order of the day for November 27, inserting an interpellation near the head of the list. On March 5 he prevented the Chamber from voting itself a short recess and carried a proposition to devote two of the days saved in this manner to interpellations upon foreign affairs.¹

The importance of these changes lies not only in the saving of time for legislative work and the reduction of the element of danger in the interpellation but also in the new attitude of the

¹The Friday rule was not always observed. In the fall of 1902 four Fridays were used by the ministry: Oct. 24, Nov. 7, Nov. 28, Dec. 5. The Chamber reassembled Jan. 13; Jan. 29, Feb. 6, 13, 27, and March 6 were used for the budget. Interpellations were discussed out of course, Oct. 14, 21, 23, Jan. 15, Feb. 21, March 10 and 11.

ministry to the work of the Chamber. The ministers have taken charge of business as never before, arranging interpellations, using Fridays for budget or legislation, interfering when the Chamber desires a recess that is not necessary. Done without any formal change in the règlement, this is nevertheless the most significant change in parliamentary practice since the beginning of the reform movement. It is indicative of a new attitude towards the private member which will probably supplant the old principle of individual initiative. The ministry is recognized as the controlling power in the Chamber in respect to interpellations. It is but a short step from this to a general control of the Chamber. The limitation of the individual initiative which the Chamber was unwilling to undertake deliberately has begun in a most drastic fashion in this unpremeditated manner.

The possibilities of the movement have been clearly seen by the champion of the individual deputy, M. Gauthier de Clangy. Seeking to bring out the rapidity of the development of the new attitude, he referred to a case just previous to 1897, when the proposal to postpone an interpellation for six months was ruled out by the president as a confiscation of the right and as an illegal attack upon the status of the individual deputy. "But you Gentlemen of the Majority have improved upon your predecessors; you no longer postpone interpellations for six months when they displease you, you suppress them entirely when the ministers order you not to allow them to come before the Chamber."¹ He then moved that the president of the Chamber be instructed to enforce the rule requiring the discussion of an interpellation within a month of its presentation. The motion was carried, March 18, 1904, but was of no avail.

The principle which caused the failure of so many reform projects and mutilated the reform of the committee system has thus suffered a most important limitation. The thorough reorganization of legislative machinery which was hitherto impossible has now a chance of success.

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¹ C. D. Débats Parl., 1904, i, 1003-4.

THE SOCIAL COMPOSITION OF THE PRIMITIVE ROMAN POPULUS

OF the many problems connected with the early political and constitutional history of Rome doubtless the most fundamental is that of the social composition of the primitive *populus* and of its component elements, the tribes and the *curiae*. Our solution of this problem will determine our conception of the whole course of constitutional development and of the accompanying political struggles, to the complete equalization of the social ranks. For if we believe, as do many of the moderns, that the primitive Roman state was made up exclusively of patricians, we are forced to the conclusion that the constitutional development to the passing of the Hortensian laws centered in the gradual admission of the plebeians and the clients to citizenship—perhaps even in the amalgamation of two distinct peoples. If on the other hand we take the ground that from the beginning the plebeians and the clients were citizens and voted in the *comitia curiata*, we must think of these inferior classes as struggling through the early history of their country for the acquisition not of citizenship but of various rights and privileges, social, economic, religious and political, formerly monopolized by a patrician aristocracy. In attempting to solve the problem here proposed it will be advantageous to consider (1) the ancient view, (2) the conventional modern view, (3) the comparative-sociological view.

I. *The ancient view*

The three social classes of freemen—plebeians, patricians and clients—were formed within the citizen body by official recognition of existing distinctions not of nationality but of merit. The first step in the process was the differentiation of the patricians from the plebeians. According to Cicero, Romulus constituted a number of chief men into a royal council, the Senate, whose members he so highly esteemed as to have them called

patres, and their children patricians.¹ Cicero thinks of the multitude as existing at first without a politically recognized nobility, yet showing natural distinctions of worth. By calling into the Senate the ablest and best men, the state ennobled them and their families.² Livy's³ view is similar: Romulus selected from the multitude a hundred senators, whom he named *patres* and whose descendants were called patricians. They were chosen because of their wisdom;⁴ on that ground the state granted them nobility,⁵ which accordingly in Rome, as in every early community, was founded on personal merit.⁶ In the more detailed theory of Dionysius,⁷ Romulus

distinguished those who were eminent for their birth and celebrated for their virtue, and whom he knew to be rich in the account of those times and who had children, from the obscure and mean and poor. The lower class he called plebeians, Greek δημοτικοί, and the higher *patres*, either because they were older than the others, or had children, or were of higher birth, or for all these reasons The most trustworthy historians of the Roman constitution assert that owing to these facts they were called *patres* and their descendants patricians.

According to Plutarch,⁸ "Romulus, after forming the army, employed the rest of the people as the citizen body (*δῆμος*); the

¹ Rep. ii, 8, 14; 12, 23: "Senatus, qui constabat ex optimatibus, quibus ipse rex tantum tribuisset, ut eos patres vellet nominari patriciosque eorum liberos."

² In the expression "omnibus patricis, omnibus antiquissimis civibus," Cicero (*Cæc.*, 35, 101) intends no more than to include the patricians among the oldest citizens, whom he is contrasting with the newly-admitted "municipes." Only the most superficial examination of the passage (*cf.* Willems, *Sénat de la République romaine*, i, 7) could make "omnibus patriciis" equivalent to "omnibus antiquissimis civibus."

³ i, 8, 7.

⁴ *Ibid.*: "Consilium deinde viribus parat."

⁵ Livy, iv, 4, 7: "Nobilitatem istam vestram quam plerique oriundi ex Albanis et Sabinis non genere nec sanguine sed per coöptationem in patres habetis, aut ab regibus lecti aut post reges exactos iussu populi."

⁶ Livy, i, 34, 6: "In novo populo, ubi omnis repentina atque ex virtute nobilitas sit."

⁷ ii, 8, 1-3. In 12, 1, he shifts his point of view: Romulus chose the hundred original senators from the patricians.

⁸ Romulus, 13; *cf.* Q. R., 58.

multitude he called *populus*, and appointed a hundred nobles to be councillors, whom he called patricians, and their assembly the Senate.¹

There can be no doubt, therefore, as to the opinion of the ancient writers. They believed that from the beginning social distinctions existed naturally within the *populus Romanus*, and that these distinctions were made the basis of an official division of the people into nobles and commons, *patricii* and *plebs*, by the government. This view is not only reasonable in itself, but is supported, as we shall see, by analogies drawn from many other states.

All the sources make the patriciate depend upon connection with the Senate, Dionysius alone showing some inconsistency on this point.² Why the senators were called *patres* the ancients give various reasons. Cicero³ thinks *patres* a term of endearment; Sallust⁴ believes that the name was applied either because of age or because of the similarity of their duty; Livy⁵ sets it down as a title of honor; Festus⁶ thinks chiefly of their age and wisdom; Paulus,⁷ his epitomator, suggests that they were so called because they divided their lands among the poorer class as fathers among children; Dionysius⁸ gives three possible reasons, (1) greater age, (2) possession of children, (3) family reputation. The sources generally agree in rep-

¹ Cf. further Ovid, *Fasti*, iii, 127 *et seq.*; Vell. Pat., i, 8, 6; Festus, 246, 23; 339, 11.

² There is no inconsistency, however, in the fact that some noble *gentes* claimed descent from Aeneas or from deities (*cf.* Seeley, Livy, 57) or from Alban or Sabine ancestors (*cf.* Livy, i, 30, 2; iv, 4, 7; Dion. Hal., ii, 46, 3; iii, 29, 7); they were nobles in their original homes before the founding of Rome, but became patricians only by an act of the Roman government.

Although after the creation of the first hundred *patres*, the ancients do not distinctly state that each newly made senator was the founder of a new patrician family, they do represent the enlargement of the Senate and of the patriciate as going hand in hand; in this way they continue to make the patriciate depend upon membership in the Senate; *cf.* Livy, i, 30, 2; 35, 6; Dion. Hal., ii, 47, 1; iii, 67, 1; Madvig, *Verfassung und Verwaltung des römischen Staates*, i, 75.

³ Rep., ii, 8, 14; *cf.* Vir., Ill., ii, 11.

⁴ Cat., 6, 6; *cf.* Isid. Etym., ix, 6, 10: "Nam sicut patres suos, ita illi rem publicam habebant" (or "elebant").

⁵ i, 8, 7.

⁶ 339, 11.

⁷ 247.

⁸ ii, 8, 1.

resenting the *patres* as men who in age, honor, authority and duty stood toward the rest of the citizens as a father toward his children, and in identifying these social-political *patres* with the senators.¹ An examination of the word itself will tend to confirm the ancient view. It seems to have originally signified "protector," "keeper," "nourisher,"² hence "owner," "master." *Pater familias* is nourisher, protector and master of a household.³ In late Roman law the term continued to refer not necessarily to actual parentage but rather to the legal position of the head of a household;⁴ in fact it is only in a distantly derived sense that *pater* comes to signify the male parent. Ideas early attaching to the word, accordingly, are those of power or authority and age. The Senate, as this word indicates, was originally made up of elderly men, *senatores, maiores natu*,⁵ It would be natural to call them *patres* because of their authority over the community or of their age. As a designation of rank, *pater*, excepting in jest, is always plural,—an indication that the authority and dignity did not attach to the individual noble but to the senators collectively; they were collectively *patres* of the community, not individually *patres* of children, clients or *gentes*.⁶ But when in time a limited number of families monopolized the Senate, the term could easily be extended to the entire privileged circle, meaning those with hereditary right to authority over the rest of the community.⁷

¹ Cf. Mommsen, Römische Forschungen, i, 227.

² From the root *pa*, to protect, preserve, *conservare*; Pott, Wurzel-Wörterbuch der Indogermanischen Sprachen (2d ed.), 221; Corssen, Aussprache der lateinischen Sprache, i, 424; Schrader, Sprachvergleichung und Urgeschichte, 538; Lécrivain, in Daremburg et Saglio, Dict., ii, 1507.

³ Dig., i, 16, 195, 2: "Pater familias appellatur qui in domo dominum habet." In like manner *patronus* is protector of clients, *pater patriae*, protector of his country; Pott, *ibid.* 227.

⁴ Ulpian, in Dig., *ibid.*: "Pater autem familias recte hoc nomine appellatur, quamvis filium non habeat; non enim solam personam eius, sed et ius demonstramus: denique et pupillum patrem familias appellamus."

⁵ Livy, i, 32, 10 (from a fetial formula).

⁶ Rubino, Römische Verfassung und Geschichte, 186; Mommsen, Röm. Forsch., i, 228, n. 16.

⁷ In the same way *reges* is made to include the whole family of the *rex*; Livy, i, 39, 2. For other illustrations of the same principle, see Rubino, *ibid.* 188, n. 1.

Though in the sources the *patres* are generally senators, the word is sometimes synonymous with *patricii*.¹

Regarding *patricius* the Romans reasoned with somewhat less care. They were right in deriving it from *pater*, but they made it signify "descended from," whereas in fact it means "belonging to,"² and designates accordingly the families of the political *patres*. Probably it was formed after *patres* began to apply to the entire governing class—a development which would tend to throw the latter word back to its earlier and narrower sense.

Had the investigation of these words on the part of the ancients rested at this point, all would have been well; but an unfortunate guess as to the derivation of *patricii* by some unknown antiquarian has brought into the study of the social ranks unutterable confusion lasting down to the present day. This conjecture derives *patricius* from *patrem ciere*, making it signify "one who can cite a father." The attempted etymology, clearly a failure, would perhaps have been harmless, had it not connected itself with the ambiguous word *ingenuus*. Cincius³ says, "Those used to be called patricians who are now called *ingenui*." Livy has the two ideas in mind when he represents a plebeian orator as inquiring, "Have ye never heard it said that those first created patricians were not beings sent down from heaven, but such as could cite their fathers, that is, nothing more than *ingenui*? I can now cite my father—a consul—and my son will be able to cite a grandfather."⁴ There should

¹ The Twelve Tables seem to apply it to all patricians, not to senators alone; Cicero, Rep., ii, 37, 63: "Conubia . . . ut ne plebei cum patribus essent;" Livy, iv, 4, 5: "Ne conubium patribus cum plebe esset;" perhaps also in ii, 33, 1: "Neve cui patrum eum magistratum licet," *patrum* is equivalent to *patricorum*. These passages, however, do not afford absolute proof; for Gaius, bk. vi, ad legem Duodecim Tabularum (Dig., i, 16, 238: "Plebs est ceteri cives sine senatoribus"), probably commenting on the very law quoted by Cicero and Livy, seems to understand *patres* as senators; cf. Vassilis, Athena, xii, 57 *et seq.*

² Cf. *tribunicius* from *tribunus*, Pott, *ibid.* 227; *patricius* is an adjective signifying paternal, ancestral, belonging to parents or progenitors; Corssen, *ibid.* i, 53.

³ In his work on the *Comitia*, quoted by Festus, 241, 21: "Patricios eos appellari solitos qui nunc ingenui vocentur."

⁴ x, 8, 10: "En umquam fando audistis patricios primo esse factos non de caelo demissos, sed qui patrem ciere possent, id est nihil ultra quam ingenuos" . . .?

be no doubt as to the meaning of these passages; the antiquarian who conjectured that *patricius* was derived from *patrem ciere*, and therefore defined *patricii* as those who could cite their fathers, meant merely those who had distinguished fathers, and hence were of respectable birth. Ordinarily in extant Latin literature *ingenui* are simply the freeborn; and in making Appius Claudius Crassus in 368 B. C. include in the term the whole body of citizens Livy¹ dates this meaning back to the period before the Licinian-Sextian laws. Elsewhere are indications that in early times *ingenui* connoted rather respectable birth, and so applied especially to the patricians.² The quotation from Cincius and the attempted derivation of *patricius* from *patrem ciere*, accordingly, are sufficiently explained without resorting to the strange hypothesis, held by some, that in primitive Rome the patricians were the only men of free birth.

In summarizing the ancient view as to the origin and nature of the patriciate, it will be enough to say that the king chose from the people men who were eminent for the experience of age, for ability and reputation, to sit in his council, the Senate; the men so distinguished were called *patres*, whereas the adjective *patricius* applied as well to their families—the *patricii* being those who could cite illustrious fathers. From this point of view the Roman nobility did not differ from that of most other countries.

¹ vi, 40, 6.

² Plutarch, Q. R., 58: "Those who were first constituted senators by Romulus were called *patres* and *patricii* as being men of good birth, who could show their pedigree." In its adjectival and adverbial uses *ingenuus* connotes not the quality of free birth, but respectability, nobility. The original meaning is "born within," hence indigenous, native: cf. Forcellini, Totius Latinitatis Lexicon, s. v. In this sense it could not apply to the patricians, who generally claimed a foreign origin. But native is superior to alien; doubtless in this secondary meaning of excellence it attached to the nobility, the close relation of the word to *gens* (family, lineage) attracting it in that direction. Afterward it was so democratized as to include all the freeborn. With this meaning we find it as early as Plautus, Mil., iii, 1, 189; iv, 1, 15. According to Dionysius, ii, 8, 3, the identification of *patricii* with *ingenui* in its sense of freeborn was accepted not by the most trustworthy historians, but by certain malicious slanderers: "Some say they were called patricians because they alone could cite their fathers, the rest being fugitives and unable to cite free fathers."

The *plebs*,¹ then, were the mass of common freemen, from whom the nobility was differentiated in the way described above. From the ancient point of view they existed from the beginning, prior even to the patriciate itself.

It is equally true that in the opinion of the ancients the *plebs* were prior to the clients. Cicero² records that Romulus distributed the *plebs* in clientage among the chief men; Dionysius adds that he gave the plebeians liberty to choose their patrons from among the patricians. Thus far their view is in complete accord with modern sociology, which teaches that such class distinctions first arise through the differentiation of freemen. Although aware of the fact that clientage existed in other states which were presumably older than Rome,³ her historians doubtless felt that the institution could have been legalized in their own country only by recognition on the part of the government. They did not, however, work out a consistent theory of the relation between this class and the plebeians. Certain passages⁴ hint, though they do not expressly assert, that at one epoch all the plebeians were in clientage, whereas in their accounts of political struggles the ancient writers uniformly array clients against plebeians from the earliest times.⁵ The latter view is historically better founded.

There must have been various origins of clientage, with corresponding gradations of privilege. The *libertini* were citizens with straitly limited rights; other clients, certainly the greater part of the class, not only followed their patron to war⁶ and to the forum,⁷ but also testified and brought accusations in the

¹ The word is probably derived from the same root as *populus*; Corssen, Aussp. d. Lat., i, 368.

² Rep., ii, 9, 16.

³ ii, 9, 2.

⁴ Notably among the Sabines, Livy, ii, 16, 4; Dion. Hal., ii, 46, 3.

⁵ Cicero, Rep., ii, 9, 16; Dion. Hal., ii, 9, 2.

⁶ Cf. the citations in Mommsen, Römisches Staatsrecht, iii, 71, n. 1. Dionysius, ii, 63, 3, distinguishes the two classes as early as the *interregnum* which followed Romulus.

⁷ Dion. Hal., v, 40, 3; vi, 47, 1; vii, 19, 2; x, 43. As late as 134 B.C. Scipio called his clients to follow him to the Numantine war; Appian, Hisp., 84.

⁸ Livy, iii, 58, 1.

courts¹ and voted in the assemblies;² and when the plebeians gained the right to hold offices the clients were admitted along with them to the same privilege.³ In his relation with the state, therefore, the ordinary client did not differ essentially from the plebeian.

From the preceding examination of the social ranks it at once becomes evident that the ancients made the *populus* comprise both patricians and plebeians; in further proof of their view may be cited the following juristic definition: “*Plebs* differs from *populus* in that by the word *populus* all the citizens are meant, including even the patricians, whereas *plebs* signifies the rest of the citizens, excepting the patricians.”⁴ Since the sources generally consider the patricians the descendants of the hundred original senators,⁵ they cannot help regarding the *populus* as composed chiefly of plebeians. In common speech the term, like our word people, often applies to the lower class as distinguished from the higher, in which sense it is interchangeable with *plebs*; often, too, it signifies the people in contrast with the Senate.⁶ It is clear, then, as Mommsen has pointed

¹ Dion. Hal., ii, 10, 3.

² Livy, ii, 56, 3; 64, 2; Dion. Hal., ii, 10, 3; iv, 23, 6; ix, 41, 5.

³ Dion. Hal., ii, 10, 3 (it was not lawful for either patron or client to vote against the other). Marius, a client of Herennius, was elected to the praetorship; Plut. Mar., 5. A law declared that election to a curule office (according to Plutarch, or as Marius asserted to any office) freed a man and his family from clientage. Evidently this law was passed in or after 367 B. C. Mucius, a client of Ti. Gracchus, was elected to the plebeian tribunate; Plut. Ti. Gracchus, 13. Cn. Flavius, who was the son of a freedman and probably therefore a client, was elected curule aedile for 304 B. C.; Livy, ix, 46, 1; Val. Max., ii, 5, 2.

⁴ Gaius, i, 3: “*Plebs* autem a populo eo distat, quod populi appellatione universi cives significantur connumeratis etiam patricii; *plebis* autem appellatione sine patriciis ceteri cives significantur.” Evidently Pomponius held the same view; Dig., i, 2, 2, 1-6; cf. Capito, in Gell., x, 20, 5; Festus, 233, 29; 330, 19; Isid. Etym., ix, 6, 5 et seq.; Mommsen, Röm. Staatsr., iii, 4, n. 2.

⁵ Cicero, Rep., ii, 12, 23; Livy, i, 8, 7; Zonaras, vii, 9; Isid. Etym., ix, 6, 6.

⁶ Illustrations of this common use are Cicero, Rep., ii, 8, 14; 12, 23; Livy, ii, 54, 3; iv, 51, 3; x, 13, 9; xxv, 2, 9; 3, 13; 3, 16; xxx, 27, 3; xxiv, 54, 4; xxvii, 58, 1; xliv, 8, 9. The Greeks always regard *populus* as the equivalent of δῆμος; cf. Plut. Rom., 13. Not only does the tribune in addressing the *plebs* call them *populus Romanus* (Sall. Iug., 31), but the consuls also apply the term to the same class (Livy, xxv, 4, 4); and a statement of Cicero (Leg. Agr., ii, 7, 17), which has the appearance of a legal definition, makes the people of the thirty-five tribes under a tribune the *universus populus Romanus*.

out,¹ that if *populus* signifies first the whole body of citizens and secondly the commons as distinguished from the nobles, it could not possibly have as a third equivalent the patricians as distinguished from the plebeians. In certain formulæ found in addresses, wills, prayers and oracles, *populus* is so joined with *plebs* (*populus plebesque* or the like) as to suggest the possible meaning patricians.² The combination of the two words with *senatus*,³ however, reveals at once the overlapping of the terms so combined. In these passages reference is to the modes by which an individual may apply to the state; he may address the consuls, praetors or plebeian tribunes, and in the same way the Senate, *populus* or *plebs*.⁴ Hence in these formulæ the word *populus* does not apply solely to the patricians, and the same may be said of its use in all other connections. We may conclude, therefore, that the Latin language gives no hint of an exclusively patrician *populus*.

Regarding the *populus* as made up of patricians, plebeians and clients, our sources necessarily ascribe the same social composition to its divisions, the three old tribes and the thirty *curiae*.⁵ With perfect consistency they mention repeated enlargements of the *populus* and of the tribes and *curiae*, through the admission of masses of aliens, most of whom must have remained plebeian. In fact the sources uniformly represent all the kings as freely admitting conquered aliens without exception to the citizenship and to the tribes and the *curiae*, even compelling some forcibly to enter this condition.⁶

¹ Röm. Forsch., i, 172.

² Cicero, Fam., x, 35; Verr., v, 14, 36; Mur., i, 1; Livy, xxix, 27, 2; Tac. Ann., i, 8; Macrobius, Sat., i, 17, 28; cf. Mommsen, Röm. Forsch., i, 169, n. 4.

³ E. g. *senatui populo plebique Romanae*; Cicero, Fam., x, 35 (address).

⁴ Mommsen, Röm. Staatsr., iii, 6, n. 4; Soltau, Altrömische Volksversammlungen, 84.

⁵ For the division of the *populus* into tribes and *curiae*, see Cicero, Rep., ii, 8, 14; Livy, i, 13, 6; Dion. Hal., ii, 7, 2; Appian, B. C., iii, 94. The author of Vir. Ill., ii, 12, in supposing that the *plebs* alone were assigned to the tribes is certainly wrong; but his mistake is pardonable in view of the general agreement among our sources that the *populus*, πλῆθος, contained in the *curiae* were mainly plebeian.

⁶ Cicero, Rep., ii, 7, 13; 8, 14; 18, 33; Livy, i, 13, 4; 13, 6; 28, 7; 30, 1; 33, 1-5; Dion. Hal., ii, 46, 2 et seq.; 47, 1; 50, 4 et seq.; 55, 6; iii, 29, 7; 30, 3; 31, 3; 37, 4; 48, 2; iv, 22, 3.

Might the plebeians and clients belong in a restricted sense to the *populus* and *curiae*, and yet remain so far inferior to the patricians as to be excluded from the political meetings of the *curiae*—the *comitia curiata*? There can be no uncertainty as to the answer to this question, for the ancient writers agree that the *comitia curiata* included plebeians and clients as well as patricians.¹ Not only did the lower classes attend this assembly, but they also voted in it, and constituted the majority.²

II. *The conventional modern view*

The passages cited above suffice to prove that the ancient writers thought of the *populus*, and consequently of the *comitia curiata*, as composed from the earliest times of patricians, clients and plebeians. Another question, far more difficult, is whether the ancients were right in their view.

As none of the authorities on whom we directly depend for our knowledge of Roman affairs lived earlier than the last century of the republic, they could have had no first-hand acquaintance with primitive Roman conditions, but must have drawn their information concerning the remote past from earlier writers—the annalists—now lost. Niebuhr, who in the opening years of the last century introduced the modern method of investigating Roman history, was convinced that writers of the late republic and of the empire, lacking historical perspective and interpreting their sources in the false light of existing or recent conditions, came to wrong conclusions in regard to the primitive Roman state. He believed he could point to instances of such misunderstanding and he thought it within the power of a well-equipped modern historian to eliminate much of the error so as to come near to the standpoint of the earlier and more trustworthy annalists.³

¹ Cf. Dion. Hal., ii, 8, 4.

² Livy, i, 17, 11; 35, 2; 43, 10; 46, 1; Dion. Hal., ii, 10, 3; 14, 3; 60, 3; 62, 3; iv, 12, 3; 20, 2.

³ Cf. Lectures on the History of Rome, i, 80, 83: "I beg you to mark this well . . . that even ingenious and learned men like Livy and Dionysius did not comprehend the ancient institutions and yet have preserved a number of expressions from their predecessors from which we, with much labor and difficulty, may elicit the truth."

The position of Niebuhr has in the main proved untenable. Notwithstanding all the source-sifting of modern times, pursued most zealously by the Germans, we are obliged to admit that it is rarely possible with any fair degree of certainty to discover the view of an annalist on a given subject excepting in the few cases in which the citation is by name. We must also admit that though Cicero and the Augustan writers might misinterpret Fabius Pictor in minor details, it is inconceivable that they should fail to understand his presentation of so fundamental a subject as the character of the original *populus* or the composition of the earliest assembly. Present scholarship accordingly insists that in such weighty matters there was no essential difference of view between earlier and later writers.¹

These considerations have simplified but not solved the problem. Scholars now agree that no contemporary account of the regal period—ending 509 (?) B. C.—ever existed; and even if it be conceded that the earliest Roman annalist—Fabius Pictor, born about 250 B. C.—had access to traditional or documentary² information reaching back to the close of that period, no historian will admit such a possibility for the beginnings of Rome. It follows then that for the origin and character of her earliest institutions Cicero, Livy and Dionysius, or their sources, have relied wholly on inference from later conditions, in so far as they have not resorted to outright invention. Though with their abundant material they were in a far better position for making such deductions than we are, they lacked the experience and the acute critical method of the moderns.³ Of the three writers above mentioned—our main sources for the subject under discussion—Cicero was essentially an orator, Dionysius a rhetorician, and Livy, though historian in name, was in spirit

¹ The school of Mommsen, which still clings to Niebuhr's theory of an exclusively patrician *populus*, has abandoned the attempt to support it by a reconstruction of lost sources.

² The late regal period may have left a few documents which, if used by the annalists, might have thrown light on the condition of that time. It has not yet been determined whether the inscription recently found in the Roman Forum belongs to the late regal or to the early republican period.

³ Mommsen, Röm. Staatsr., iii, 69, grants to the ancients far more knowledge of their own history, but claims a "wider horizon."

rhetorical and dramatic rather than critical. Naturally therefore they or their sources, who on the whole were equally uncritical, made mistakes in the difficult work of drawing inferences as to the history and institutions of the regal period. Such is the view of historians to-day. It was formerly argued that Dionysius, a rhetorician and a Greek, failed in spite of his twenty-two years of preparation at Rome to understand the spirit and character of the Roman constitution and has therefore been an especial fountain of error;¹ but it is now clear that though he shows far greater amplitude than Livy and is for that reason proportionally more liable to error in detail, he follows good Roman sources for institutions, and is in this field, with the reservation here mentioned, not essentially inferior to the extant native writers.²

Considering the sources untrustworthy and following certain clues which he believed they afforded to a right understanding of the annalists, Niebuhr came to his theory as to the composition of the primitive Roman state. Although he asserts that it was made up of "patrons and clients,"³ he does not rest satisfied with this view, but proceeds to trace clientage to the following origins, as though in his opinion this institution did not exist from the beginning: (1) some native Sicilians perhaps, who were conquered by Latin invaders; (2) strangers settling on Roman territory and choosing a Roman as protector; (3) inhabitants of communities which were obliged to take refuge under Roman protection; (4) manumitted slaves.⁴ Logically he goes back to a state made up exclusively of patricians.

¹ Niebuhr treats Dionysius with great respect; cf. Lectures, i, liv: "The longer and more carefully the work is examined, the more must true criticism acknowledge that it is deserving of all respect, and the more it will be found a store-house of most solid information." Schwegler, Römische Geschichte, i, 621 *et seq.*, and 626 *et seq.*, assumes that Dionysius is alone responsible for the view that the plebeians were in the primitive tribes and the *curia*. A glance at the citations given above, p. 506, will show, however, that Cicero and Livy shared this view.

² Cf. Pais, Storia di Roma, i, 1, 82. The usual opinion (cf. Beruhöft, Römische Königazeit, 8 *et seq.*) is that the sources of Dionysius are later and less trustworthy than those of Livy, but Pais asserts that on the whole the two authors drew from the same sources.

³ History of Rome, i, 165.

⁴ Lectures on Roman history, i, 81, 100 *et seq.*

He sought evidence for this hypothesis in the scheme of tribal organization of Rome. The primitive city was divided into three tribes, thirty *curiae* and, as he believed, three hundred *gentes*. As no one could be a citizen without membership in a *gens*,¹ and as the patricians alone were active members of the *gentes*,² it must follow that the patricians alone were citizens. It is doubtful whether he would have proposed this hypothesis had it not been for the analogy of the Attic tribal scheme. An imperfect quotation from the lost part of Aristotle's *Constitution of Athens*³ seems to signify that the Athenian state was once divided into four tribes (*φυλαι*), twelve phratries and three hundred and sixty *gentes* (*γένη*). On this authority Niebuhr supposes that the phratry was a group of *gentes*, and he assumes further that both phratries and *gentes* were composed exclusively of eupatrids.⁴ But the suppositions (1) that there were three hundred and sixty *gentes*, (2) that the phratry was a group of *gentes*, (3) that both phratries and *gentes* contained only eupatrids are contradicted by well known facts. From the earliest times the Greek tribes and phratries included commons as well as nobles. This is true of the Homeric Greeks,⁵ and a law of Draco⁶ proves that the early Attic phratry comprised both nobles and commons. In historical times all citizens belonged to the phratries; whereas but few were members of the *gentes*.⁷ Most of the *gentes* were in fact composed of the old landed nobility, though a few, like the Chalkidae and the Eupyridae, were apparently industrial guilds, which had received

¹ History of Rome, i, 158.

² In *ibid.* i, 162, he excludes the "freed clients" from the *gens*; in 165 he states that the nobles alone *had* the *gens*, the clients belonged to it in a dependent capacity.

³ Cf. the edition of Sandys, 252; Rose, Aristotelis Frag., 385.

⁴ History of Rome, i, 160. Genz, Patricisches Rom., 6, has the same idea.

⁵ Il., ii, 362 *et seq.*; ix, 63 *et seq.*

⁶ CIA. i, 61; cf. Dem., xlivi, 57.

⁷ This is illustrated, for instance, by a law quoted by Philochorus, Müller, Frag. Hist. Graec., i, 399, 94; Τοῖς δὲ φράτορας ἐπίτιμοις δέχεσθαι καὶ τοὺς ὄργενοις καὶ τοὺς ὁμογάλακτος, οὓς γεννήτας καλοῦμεν ("The members of the phratry must receive the *orgeones* as well as the *homogalaktes*, whom we call *gennetas*"). This fact is now too well known to need further proof; cf. Gilbert, Constitutional Antiquities of Sparta and Athens, 148 *et seq.*; Thümser, Griechische Staatsalterthümer, 324 *et seq.*

the privileges of the *gentes*. So far therefore from supporting Niebuhr in his peculiar view of the Roman *gentes* and *curiae*, the Attic analogy militates in every way against him.

He believed that he found confirmation of his view in certain statements of the ancient writers which seemed to him to have a bearing on the question. The first is Dion. Hal. ii, 7, 4: "Romulus divided the *curiae* into decades, each commanded by a leader, who in the language of the country is called *decurion*."¹ The word *decurion* proves that in speaking of decades Dionysius is thinking of the military divisions called *decuriae*, each commanded by a decurion. In historical times the troop of cavalry—*turma*—was divided into three *decuriae* of ten each, as the word itself indicates. There were accordingly three decurions to the *turma*, and ten *turmae* ordinarily went with the legion.² From Varro³ we learn that the three primitive tribes furnished *turmae* and *decuriae* of cavalry, the *decuriae* commanded by decurions. Dionysius accordingly refers to military companies—either to the well known *decuriae* of cavalry or to corresponding companies of footmen which probably existed before the adoption of the phalanx.⁴ Had Dionysius meant *gentes*, he would have used the corresponding Greek word γένη. Niebuhr⁵ inferred from this passage that each *curia* was divided into ten *gentes*, making three hundred *gentes* for the entire state; but a careful interpretation shows that no reference to the *gentes* is intended. We cannot infer therefore from this citation that the *curia* was divided into *gentes*.

The other passage relative to the question is Gellius xv, 27, 4,⁶ in which Laelius Felix states that the voting in the *comitia*

¹ Διιστρονται δὲ καὶ εἰς δεκάδας αἱ φράτραι, πρὸς αὐτοῦ, καὶ θεμὰν ἐκάστην ἐκβοηεῖ δεκάδα, δεκυρίων κατὰ τὴν ἐπιχώριον γλώτταν προσαγορενόμενος.

² Polybius, vi, 25, 1; cf. 20, 9.

³ L. L., v, 91.

⁴ There is no need of assuming, with Bloch, Origines du Sénat romain, 102–105, that the *decuriae* mentioned by Dionysius are "purely imaginary."

⁵ Cf. also Schwegler, Röm. Gesch., i, 612 et seq. The antiquated view is still held by Herzog, Römische Staatsverfassung, i, 96 et seq., and by Lécrivain, in Daremburg et Saglio, Dict., ii, 1504. Though Ihne, History of Rome, i, 113, n. 3, believes that the *curiae* were composed of *gentes*, he is doubtful as to the number.

⁶ "Cum ex generibus hominum suffragium feratur, curiata comitia esse; cum ex censu et aetate, centuriata; cum ex regionibus et locis, tributa."

curiata was by *genera hominum* in contrast with the *census et aetas* of the centuriate assembly and with the *regiones et loca* of the *comitia tributa*. Niebuhr identifies *genera* with *gentes*.¹ It is clear, however, that in this passage Laelius is not concretely defining the voting units of the various assemblies, but is stating in a general way the principles underlying their organization into voting units. In the *comitia centuriata* the principle is wealth and age; *census et aetas* is not to be identified with *centuria* or with any other group of individuals in this assembly. In like manner *regiones et loca* expresses the principle of organization of the tribal assembly; or if used concretely, it must designate the tribes themselves, and not subdivisions, for none existed. Correspondingly *genera hominum* signifies that the principle of organization of the curiate assembly is hereditary connection; but so far as the expression is applied concretely, it must denote the *curiae* themselves, not subdivisions. The *curia*, a religious, social and political group based on birth, might well be called *genus hominum* in contrast with the local tribe and with the century, composed artificially of men of similar wealth and age. It is well known, too, that voting within the *curiae* was not by *gentes* but by heads.² As no other passage from the sources, besides these two, has even the appearance of lending support to the proposition advanced by Niebuhr, and favored by others, that the *curia* was a group of *gentes*, we may conclude that this proposition is absolutely groundless. On the relation between these two groups, therefore, even without considering the nature of the *gens*, no argument can be founded for the theory of exclusively patrician *curiae*. A careful, unprejudiced examination of the *gentes* would prove that not even these smaller associations were wholly patrician.

That membership in a *curia*, rather than in a *gens*, was essential to citizenship is confirmed not only by the many passages which refer to the assignment of new citizens to the

¹ Mommsen, too, supposes that *genera* here means *gentes* but is used so as to include also the plebeian *stirpes*; nevertheless he knows that the voting in the curiate assembly was by heads rather than by *gentes*: Röm. Staatsr., iii, 9, n. 2; 90, n. 5.

² Livy, i, 43, 10: "Viritim suffragium . . . omnibus datum est" (i. e. in the curiate assembly).

curiae,¹ but also by the consideration that had the plebeians lacked the citizenship till after the *curiae* became politically effete, they never would have been placed in the *curiae*, and these associations would not have been deemed essential to colonies and *municipia*. If too the *gens* had been a necessary element in the organization of the state, as was the *curia*, the *sacra* of the *gens*, as of the *curia*, would have been public, whereas they were in fact private.²

Other evidence for his hypothesis Niebuhr thinks he finds in a statement of Labeo,³ that the curiate assembly was convoked by a lictor, the centuriate by a horn-blower; while Dionysius⁴ says that the patricians were summoned by name through a messenger, the people by the blowing of a horn. Thus Niebuhr maintains that Labeo and Dionysius agree unequivocally in designating the *curiae* as the assembly of the patricians. But in fact these two sources refer to the customs of the historical age, when the curiate assembly was ordinarily attended only by three augurs and thirty lictors. Horn-blowing under these circumstances would have been absurd. The summoning of the patricians by their own name and that of their father, on the other hand, proves them too few to compose a popular assembly. These citations therefore are far from supporting his hypothesis. His last and greatest proof is the identification of the *lex de imperio*, passed by the *curiae*, with the *patrum auctoritas*. If these are merely two terms for the same act, the *curiae* must have been made up of *patres*. But by establishing the fact that the *patrum auctoritas* belonged to the Senate or to its patrician members, Willems⁵ and Mommsen⁶ have deprived Niebuhr's hypothesis of its main prop.

¹ *Supra*, p. 506, n. 6.

² Festus, 245, 28: "Publica sacra, quae publico sumptu pro populo fiunt, quaeque pro montibus, pagis, curis, sacellis. At privata, quae pro singulis hominibus, familiis, gentibus, fiunt;" also Livy, v, 52, 4. Certain *gentes*, however, had charge of special state cults; cf. Lécrivain, in Daremburg et Saglio, Dict., ii, 1506. Some of this class may have been originally gentile, raised afterward to the dignity of state cults, and others were probably assigned to the *gentes* by the government.

³ Gell., xv, 27, 2.

⁴ ii, 8, 4.

⁵ *Sénat de la République romaine*, ii, 34 *et seq.*

⁶ *Röm. Forsch.*, i, 233 *et seq.*; 247 *et seq.*; cf. Genz, *Patr. Rom.*, 70.

Niebuhr evidently believed that the *curiae* continued exclusively patrician through the whole republican period.¹ This idea, however, must be dismissed for the following reasons: (1) Our sources agree that in the early republic the plebeians and clients continued to vote in the curiate assembly:² (2) The plebeians were in the *curiae* in 208 B. C., when the first *curio maximus* was chosen from the *plebs*.³ (3) In the time of Cicero thirty plebeian⁴ lictors represented the *comitia curiata*, and gave the votes.⁵ (4) Arrogations by plebeians took place in this assembly; in the well known case of Clodius it must be borne in mind that it was a plebeian who arrogated him. (5) The extinction of the patriciate did not involve the downfall of the *comitia curiata*.⁶ (6) The confirmation by the *curiae* (*lex de imperio*) of elections in the centuriate assembly was conceived as a second vote of the community.⁷ (7) The resolutions of the *comitia curiata* are always thought of as resolutions of the *populus*, which Latin literature nowhere restricts to the patrician body. (8) In all ancient literature there is nowhere the slightest hint of a change in the social composition of the *curiae* or of the *comitia curiata* in the whole course of their history. What the ancients believed to be true of either institution at any particular period will hold therefore for its entire history.⁸

¹ E. g. History of Rome, ii, 147; iii, 73: "the common council of the *patres*—the curies.

² Cicero, Frag. A, vii, 48; Livy, ii, 56, especially § 3; Dion. Hal., vi, 89, 1; ix, 41.

³ Livy, xxvii, 8, 3.

⁴ Mommsen, Röm. Forsch., i, 148.

⁵ Cicero, Leg. Agr., ii, 12, 31.

⁶ Cicero, Dom., 14, 38; Livy, vi, 41, 10.

⁷ Cicero, Rep., ii, 13, 25; Leg. Agr., ii, 11, 26; cf. Mommsen, Röm. Forsch., i, 147 *et seq.*

⁸ In the face of all evidence to the contrary two or three scholars persist in maintaining essentially the opinion of Niebuhr that through the republic the *curiae* continued patrician. Herzog, Röm. Staatsverfassung, i, 98 *et seq.*, 108, 1014, n. 2, imagines that from the beginning the clients belonged to the *curia* in its administrative capacity, shared in its *sacra*, attended its meetings, but did not vote. The *plebs*, however, were not even passive members. His reasons are too shallow to deserve mention. Vassis, Πατριών Πολιτεία ἡ βασιλευομένη καὶ ἡ ἐπιθέτη (Athens, 1903) also excludes the commons from the curiate assembly throughout its history. The fancies of Hoffmann, Patricische und plebeische Curien (Vienna, 1879), need not detain us.

Of the arguments in favor of Niebuhr's hypothesis either added by Schwegler¹ or brought by him into greater prominence, one only demands attention. He reasons that if the *plebs* were in the curiate assembly, it would be impossible to explain the political advance made by the institution of the *comitia centuriata*; and the constitutional history of Rome would be reduced to an insoluble riddle. Here we have to deal with a subjective argument—the rejection of sources because they do not agree with a preconceived theory. Arguments of the kind, however, which may be easily invented for the support or overthrow of every imaginable proposition, should not be allowed to carry much weight. Besides it is easy to show by analogies from the history of other peoples that the presence of the commons in the primitive assembly does not make the constitutional history of Rome a real enigma. In the primitive German assembly, for instance, were included all the warriors; and yet in the more developed German states were monarchies and aristocracies which gave the people little or no voice in the management of public affairs. The Homeric Greek assembly included all freemen, who, however, had little to do with the government in that period, and still less under the aristocracy which followed. In like manner, although the plebeians attended the *comitia curiata* and had a majority of votes in this assembly, they could not thereby control the government, because (1) they met only at the pleasure of the king or magistrate; (2) the presiding magistrate alone had the right to initiate measures; (3) he and those only whom he invited had a right to speak; the members of the assembly merely voted yes or no on the measure proposed; (4) the decision of most governmental matters lay with the king, alone or in conjunction with the Senate, the assembly being rarely requested to vote. The *comitia centuriata*, a timocratic institution, elevated the rich and degraded the poor. Here as elsewhere the poor lost by the substitution of aristocracy for kingship; but a real constitutional advance was made in the gradations of privilege, which were based on wealth and which reached like a ladder from the hum-

¹ Röm. Gesch., i, 623 *et seq.*

blest member of the proletarian century to the patrician knight in the *six suffragia*. These gradations prepared the way for an ultimate equalization of rights. We conclude, then, that the presence of the commons in the primitive assembly is perfectly compatible with a rational view of constitutional development.

With Schwegler, who grants however reluctantly that the commons were received into the *curiae* before 208 B. C.,¹ the history of the theory enters upon its present phase; for the great majority of writers since his time have accepted his view, yet with varying opinions as to the date of the change. Mommsen,² who more than anyone else, has made it clear that, so far back as our sources reach, the *populus* comprised both patricians and commons, nevertheless adopts substantially the same view, but dates the admission of the clients to the plebeiate—that is to common citizenship and to a vote in the *curiae*—not later than the beginning of the republic but after their admission to the centuries.³ In his reconstruction of the primitive state he supposes that the citizens were all *patres*, in so far as they, and they alone, could be fathers; or adjectively *patricii*, in so far as they, and they alone, had fathers.⁴ Added to the citizens and their slaves was a class of persons termed clients, half way between freedom and slavery—a class made up from various origins but chiefly by the conquest of neighbors.⁵ These clients belonged, as dependants, to the *gentes* and the *curiae*, but had no vote in the assembly.⁶ Later the *plebs* were formed from the clients as the bond which united the latter with their patrons relaxed.⁷ The *plebs*, who were free citizens of inferior rank, came into being at the moment when the patricio-plebeian *comitia centuriata* acquired the right to express the will of the community.⁸

¹ Röm. Gesch., i, 625, n. 3.

² Röm. Forsch., i, 140 *et seq.*

³ *Ibid.* i, 269; Röm. Staatsr., iii, 92. Clason, Kritische Erörterungen über den römischen Staat (1871), 12, supposes they were admitted by the Ogulnian law, 300 B. C.; Genz, Patr. Rom., 41, 62, places their admission not earlier than the institution of the Servian tribes and not later than the decemvirate, greatly preferring the latter date.

⁴ Röm. Staatsr., iii, 13; Abriss, 5.

⁵ *Ibid.* iii, 54 *et seq.*

⁶ *Ibid.* iii, 63.

⁷ Röm. Staatsr., iii, 91.

⁸ *Ibid.* iii, 67 *et seq.*

Although he knows well the weakness of the evidence offered by earlier writers, he adopts the hypothesis of an original patrician state, without attempting a systematic defence. Here and there in his works, however, he mentions some fact or condition which he would like to have considered proof. The following are the chief passages of this kind :

(1) The lack of right to the *auspicia*¹ and to the *imperium*² on the part of the plebeians proves that the patriciate was the original citizenship.

But we could as reasonably say, with reference to the auspices, that the two Attic *gentes* which furnished the sacred exegetes contained the only Athenian citizens.³ The *auspicia*, as Soltau⁴ has noticed, belonged to the *ius honorum*, as did also the *imperium*; hence they were both privileges of the nobility. In brief Mommsen's reasoning would make a governing nobility everywhere impossible.

(2) The cavalry were patrician; therefore the infantry must have been.⁵

With the same kind of reasoning we could conclude that because in the Homeric age of Greece chariots were used in war by nobles only, the infantry must also have been exclusively noble; whereas we know that the rank and file were common men. That the Roman army before Servius was similarly composed is supported not only by this and many other analogies, but also by the unanimous testimony of the sources. It is absurd, too, to assume that a small city-state like early Rome, engaged in constant warfare with neighbors, would not put into the field its entire fighting force above the condition of slaves. As in other primitive states the warriors naturally constituted the assembly and were the citizens.

(3) Of the sixteen local tribes named after *gentes* it can be proved that ten have the names of patrician *gentes*, and not one name is known to be plebeian. This is evident proof that from the beginning the patriciate was not nobility but citizenship.⁶

¹ Röm. Staatsr., i, 91, n. 1; cf. Lange, Röm. Altertümer, i, 261 *et seq.*

² Röm. Staatsr., iii, 77.

³ Cf. Töpffer, Attische Genealogie, 177.

⁴ Altröm. Volksversamml., 93.

⁵ Röm. Staatsr., iii, 109.

⁶ Röm. Forsch., i, 106 *et seq.* and n. 80.

Any unprejudiced mind will discover at once that his premises prove no more than that at the time when these tribes were instituted the patricians were influential enough to give their names to ten, probably to all sixteen. In all the three cases mentioned, Mommsen reasons that because the patricians alone enjoyed the honors, privileges and influence usually considered appropriate to a nobility, they must therefore have constituted not the nobility simply but the whole citizen body.

(4) He identifies *patres* with *gentiles* and assumes that the primitive state was an aggregate of *gentes*, thus making the *patres* the only members of the state.¹

These are not proofs but unsupported assumptions. The only connection of *patres* with *gentes* given in Latin literature is in the well known phrases *patres maiorum* and *minorum gentium*; and Cicero² makes it clear that these *patres* were senators. The phrase means senators from, or belonging to, the greater or lesser *gentes*. Furthermore it can be proved (1) that the patricians were not the only *gentiles*,³ (2) that the *curia*, and hence the state, was not an aggregation of *gentes*.⁴

(5) We are informed, says Mommsen, (a) that the body of full Roman citizens consisted originally of a hundred families, whose fathers, the *patres*, regarded more or less concretely as the ancestors of the individual *gentes*, composed the Senate, and together with them their descendants, the patricians, made up the citizen body; or expressed in other words (b) patrician originally meant just what was afterward included under the term *ingenuus*.⁵

For (a) Mommsen cites those passages by which I have shown⁶ that the Romans looked upon the original hundred senators as the fathers neither of the "citizen body" nor of the

¹ Röm. Staatsr., iii, 13.

² Rep., ii, 20, 35: "Duplicavit illum pristinum patrum numerum et antiquos patres maiorum gentium appellavit, quos priores sententiam rogabat, a se adscitos minorum." The connection shows that Cicero is speaking of two classes of senators distinguished by the rank of the *gentes* from which they respectively came.

³ For instance, by the absence of all reference to patricianism in Scaevola's definition of the *gentilis*; Cicero, Top., 6, 29.

⁴ Supra, p. 510 *et seq.*

⁵ Röm. Staatsr., iii, 14.

⁶ Supra, p. 499, notes.

"full citizens," but of the nobility. His statement of the case is directly contradicted by the authorities he quotes. As regards (b) it has been sufficiently proved¹ that *ingenuus* when made equivalent to *patricius* most naturally signifies not "of free birth," but "of respectable, noble birth."

To the theory of an exclusively patrician *populus* the following objections may be summarily urged: (1) It is opposed by the unanimous testimony of the ancient authorities. (2) It rests upon a wrong explanation of the words *patres*, *patricii*, as designations of the nobles. (3) It is further propped up by reasons so feeble as to testify at once to its weakness, the more substantial basis having been overthrown partly by Mommsen himself. (4) The number of patricians is too small for the theory.² (5) It ignores the meaning of the word *plebs*, which evidently signifies "the masses," in contrast with the few nobles, and hence could not apply to a class gradually formed by the liberation of clients, or by the admission of foreigners. No one who holds the theory has attempted to show what these liberated clients were called when they were but a few compared with the patricians—before they became "the multitude." (6) It is contradicted by everything we know of Rome's attitude toward aliens. So far back as our knowledge reaches, she was extremely liberal in bestowing the citizenship, even forcing it upon some communities. Only when she acquired the rule over a considerable part of Italy did she begin to show illiberality in this respect. Down to 353 B. C. the citizenship thus freely extended included the right to vote.³ (7) It assumes the existence of a community politically far advanced yet showing no inequalities of rank among the freemen—a condition outside the range of human experience. It aims to explain the origin of the social classes on purely Roman ground, ignoring the fact that distinctions of rank are far older than the city, and

¹ *Supra*, pp. 502, 503.

² Cf. *supra*, p. 513.

³ That Caere was the first community to receive the *civitas sine suffragio* may justly be inferred from the expression "Caerite franchise," which designates this kind of limited citizenship. The general fact stated in (6) is further confirmed by the law which granted the right of extending the *pomerium* to those magistrates only who had acquired new territory for Rome; Gell., xiii, 14, 3; Tacitus, Ann., xii, 23.

exist, at least in germ, in the most primitive communities of which we have knowledge.¹

III. *The Comparative-Sociological View.*

As social classes belong to all society,² they cannot be explained by the peculiar conditions of any one community. The only scientific approach to this subject is through comparative study; the inferences of the ancient historians relative to primitive Rome are not to be displaced by purely subjective theories, but are to be tested by comparison with conditions in other communities of equal or less cultural advancement.

Distinctions of rank depend ultimately upon physical, mental and moral inequalities,³ which differentiate the population of a community into leaders and followers.⁴ The exhibition of

¹ Since the publication of the *Staatsrecht*, writers have made slight modifications or extensions of the conventional theory. Greenidge, in Poste, *Gaii Institutiones*, ix, suggests that the dual forms in Roman law may have as their basis a racial distinction between the patricians and the plebeians. A serious objection to this kind of reasoning is that if we are on the lookout for dualities, trinities and the like, we shall find them in abundance everywhere. It has been left to Ridgway, *Early Age of Greece*, i, 257, to discover of just what races the patricians and the plebeians were respectively composed. Undoubtedly race is a potent factor in history; but Gumplowicz, for instance, *Rassenkampf* (1883) has killed the theory by overwork.

Among the writers who have rejected the conventional view are Soltan, *Altrömische Volksversammlungen* (1880); Pelham, *Outlines of Roman History* (1893; reprint of his article on "Roman History," in the *Encyclo. Brit.*); Meyer, *Geschichte des Altertums*, ii (1893).

² Meyer, *Gesch. d. Alt.*, ii, 80; Featherman, *Social History of the Races of Mankind*, ii, 408; Hellwald, *Culturgeschichte*, i, 175; Barth, *Philosophie der Geschichte*, i, 382. It would be practicable by the citation of authorities to prove the existence of such distinctions in nearly every community, present or past, whose social condition is sufficiently known.

³ Giddings, *Principles of Sociology*, 124; Tarde, *Laws of Imitation*, 233 *et seq.*; Fairbanks, *Introduction to Sociology*, 158; Grave, *L'Individu et la Société*, 23; Funck-Brentano, *Civilisation et ses Lois*, 71 *et seq.*; Caspari, *Urgeschichte der Menschheit*, i, 125 *et seq.*; Hellwald, *ibid.* i, 175, 177; Ross, *Social Control*, 80.

⁴ Giddings, *ibid.*, 262; Ammon, *Gesellschaftsordnung*, 133 *et seq.*; Cherbuliez, *Simples notions de l'ordre social à l'usage de tout le monde*, 38 *et seq.*; Dechesne, *Conception du droit*, 36; Grave, *ibid.* 23 *et seq.*; Caspari, *ibid.* i, 133 *et seq.*; Harris, *Civilization considered as a Science*, 211; Lepelletier de la Sarthe, *Système sociale*, i, 329; Mitterer, *Principes sociologiques*, 63 *et seq.*; Rossbach, *Geschichte der Gesellschaft*, i, 13 *et seq.*; Schurtz, *Urgeschichte der Kultur*, 385; Hittell, *Mankind in Ancient Times*, i, 228 *et seq.*; Maine, *Early History of Institutions*, 130; Seebohm, *Tribal System in Wales*, 139.

physical strength and skill on the part of young men and of knowledge and wisdom on the part of the elders are often "the foundation of leadership and of that useful subordination in mutual aid which depends on voluntary deference."¹ In an age in which men were largely under the control of religion the possession of an oracle or skill in divination or prophecy might contribute as much to the elevation of an individual above his fellows.² Leadership, once obtained, could display and strengthen itself in various ways. In primitive society the strong, brave, intelligent man was especially qualified to take command in war. Success brought the chief not only renown but a large share of the booty and in later time acquired land. The same result might be obtained by other means than by war;³ but in any case wealth and influence inherited through several generations made nobility.⁴ Primarily grounded on ability, wealth and renown, this preëminence was often heightened by a claim to divine lineage or other close connection with the gods.⁵

There was evidently a stage of development—before the association of the nobles into a class—in which chieftains alone held preëminence. This condition is common in primitive society, as among the American Indians.⁶ Among the Germans,

¹ Giddings, *ibid.* 262; cf. Arnd, *Die materiellen Grundlagen . . . der europäischen Kultur*, 444 *et seq.*; Frohschammer, *Organisation und Kultur der mensch. Gesellschaft*, 84 *et seq.*; Bastian, *Rechtsverhältnisse bei verschiedenen Völkern der Erde*, 20 *et seq.*; Spencer, *Principles of Sociology*, ii, 333, 335.

² Spencer, *ibid.* ii, 338 *et seq.*

³ Cf. Rubino, *Römische Verfassung und Geschichte*, 183; Spencer, *ibid.* ii, 334 *et seq.*; Seeböhm, *Tribal System in Wales*, 72.

⁴ Aristotle, *Politics*, 1294, a 21 *et seq.*; Giddings, *Principles of Sociology*, 293 *et seq.*; Jenks, *History of Politics*, 30 *et seq.*; Grave, *L'Individu et la société*, 25; Combes de Lestrange, *Elements de sociologie*, 185; Schurtz, *Urgeschichte der Kultur*, 148, 385; Featherman, *Social History of the Races of Mankind*, see Index, s. *Classes*; Hittell, *Mankind in Ancient Times*, i, 228; Maine, *Early History of Institutions*, 134; Ginnell, *Brehon Laws*, 60 *et seq.*; Bluntschli, *Theory of the State*, 149; Vinogradoff, *Growth of the Manor*, rev. by Beard in *POL. SCI. QUART.*, xxi, 165 *et seq.*

⁵ Grave, *ibid.* 30 *et seq.*; Combes de Lestrange, *ibid.* 184 *et seq.*; Funck-Brentano, *Civilisation et ses Lois*, 68 *et seq.*; Spencer, *ibid.* ii, 348 *et seq.*; Schurtz, *ibid.* 150 *et seq.*; Featherman, *ibid.* ii, 128, 197 *et seq.*, 311; Letourneau, *Sociology*, 480 *et seq.*; Bastian, *Rechtsverhältnisse*, 8 *et seq.*

⁶ Cf. Schurtz, *ibid.* 148.

too, who had advanced somewhat beyond this stage, each chief, or lord, appears to have been noble, "less with reference to other noblemen than with reference to the other free tribesmen comprised in the same group with himself."¹ From Brehon law we infer that the Irish lords were individually heads of their several groups of kinsmen or of vassals;² and in Wales the nobles were a hierarchy of chieftains.³ As soon as leadership became hereditary there arose noble families, in which the younger members were often sub-chieftains;⁴ and finally through intermarriage among these families, as well as through the discovery of common interests, the nobles associated themselves into a class.

Among the ancient Germans,⁵ the Greeks of the Homeric age,⁶ and in some early Italian states⁷ certain families had become noble, and others were on the way to nobility. For ancient Ireland the entire process can be followed. A common freeman enters the service of some chief, from whom he receives permission to use large portions of the tribe land.⁸ By pasturing cattle he grows wealthy, becomes a *bo-aire* (cow-nobleman) and secures a band of dependants. Supported by these followers,

¹ Maine, *ibid.* 132.

² Maine, *ibid.*; Ginnell, *Brehon Laws*, 63 *et seq.*, 93 *et seq.*

³ Seebohm, *Tribal System in Wales*, 134 *et seq.*

⁴ As in Wales; Seebohm, *ibid.* 139; cf. the Inca grandees, who all claimed descent from the founder of the monarchy; Letourneau, *Sociology*, 479.

⁵ Tac. *Germ.*, 13, 3: "Insignis nobilitas aut magna patrum merita principis dignationem etiam adolescentulis adsignant." It is clear that the family of a youth who receives an office or dignity because of the merits of his ancestors is coming near to nobility.

⁶ A certain man of illegitimate birth, hence of inferior social standing, through martial skill and daring becomes a leader of warriors, acquires wealth, marries the daughter of a notable, "waxes dread and honorable" among his countrymen, who elect him to a high military command by the side of their hereditary chief; the taint of his birth is forgotten; *Od.*, xiv, 199 *et seq.*; cf. Bernhöft, *Röm. Königazeit*, 123.

⁷ Livy, x, 38, 7: "Nobilissimum quemque genere factisque," with reference to the Samnites; some were nobles by birth, others by prowess; cf. 46, 4: "Nobiles aliquot captivi clari suis patrumque factis ducti;" some of these captives were noble through their own prowess, others through that of their ancestors. The Samnite nobility was in the formative stage like that of the German nobility in the time of Tacitus.

⁸ Maine, *Early History of Institutions*, 135 *et seq.*; Giddings, *Principles of Sociology*, 294 *et seq.*

he preys upon his neighbors and, if successful, becomes in time a powerful noble.' After "a certain number of generations" he can no longer be distinguished from the blooded nobility.² Here is an instance of a common freeman's becoming noble through service to a chief. In like manner among the Saxons who had conquered England the ceorl who "thrived so that he had fully five hides of land," or the merchant who had "fared twice over the wide sea by his own means," became a thane; "and if the thane thrived, so that he became an eorl, then was he henceforth worthy of eorl-right."³

The thanes were the immediate companions of the king—his *comitatus*—and from their first appearance in English history they took rank above the earlier nobility of Saxon eorls, who were descended from ancient tribal chiefs. Thus the thanes as a nobility of newly rich corresponded to the cow-noblemen of an earlier time.⁴

In the way just described many rose from the lower ranks to nobility. In fact eminent authorities assert that the inferior nobles, especially of the middle age, were more often of servile than of free origin, as the common freemen were inclined to think it degrading to be seen among the *comites* of a chief.⁵

It has now been sufficiently established that even in the tribal condition people were differentiated into social ranks. We have traced the beginning of nobility to leadership and have found, in both ancient and mediæval society, new noble families forming by the side of the old. Social distinctions were well developed long before the founding of cities. When a community, whether a tribe or a city, is far enough advanced to begin the conquest of neighbors, "it has already differentiated into royal,

¹ Cf. Giddings, *ibid.*

² Maine, *ibid.* 136.

³ *Laws of Athelstan.*

⁴ Giddings, *Principles of Sociology*, 296; cf. Maine, *Early History of Institutions*, 141. Thus in the time of Tacitus the German youth of common blood who entered the *comitatus* of a chief had a fair opportunity to become noble; Germ., 13, 3-5; 14, 1 *et seq.* Among the Danes, too, some noble families were once peasant; Maine, *ibid.* 135.

⁵ Brunner, *Deutsche Rechtsgeschichte*, I, 235 *et seq.*, 252; Maine, *ibid.* 138; Ammon, *Gesellschaftsordnung*, 135; Schurtz, *Urgeschichte der Kultur*, 148 *et seq.*; Bluntschli, *Theory of the State*, 131, 155; Tarde, *Laws of Imitation*, 237.

noble, free and servile families."¹ This was true of Sparta. In her "the conquerors nevertheless, notwithstanding great differences among themselves, remain sharply separated in social function from the conquered . . . The conquerors became a religious, military and political class, and the conquered an industrial class."² Even in the case of Sparta, however, which is perhaps our best example of the exclusiveness of a ruling city, there is evidence of mingling between the conquering Spartans and the conquered Laconians before the former became exclusive.³ In like manner there was much mixing of the invading "Aryans" with the natives of India—the more intelligent of the natives rising to the higher classes and the less gifted of the invaders sinking to the lower—before the crystallization of the castes.⁴ We find the same mingling of conquerors and conquered in varying degrees in ancient Ireland,⁵ in England under the Normans⁶ and throughout the Roman empire in the period of Germanic settlements.⁷ It becomes doubtful, therefore, whether a nobility was ever formed purely by the superposition of one community upon another. The effect of conquest was rather to accentuate existing class distinctions, and by a partial substitution of strangers in place of native nobles to stir

¹ Giddings, *Principles of Sociology*, 315; cf. Combes de Lestrade, *Elements de sociologie*, 185; Rossbach, *Geschichte der Gesellschaft*, i, 14. A nobility formed purely by conquest, if such indeed exists, must be rare, and can hardly be lasting; Schurtz, *Urgeschichte der Kultur*, 149.

² Giddings, *ibid.* 315; cf. Grave, *L'Individu et la société*, 32.

³ Strabo, viii, 4, 4, 364; Aristotle, *Politica*, 1270, 2 34 *et seq.*

⁴ Schurtz, *Urgeschichte der Kultur*, 165.

⁵ Grinnell, *Brehon Laws*, 145.

⁶ Bluntschli, *Theory of the State*, 142; Freeman, *Norman Conquest*, iv, 11. There were nobles both in England and in Normandy before the conquest. After the battle of Senlac most of the English nobles submitted to William, and were allowed to redeem their lands; Freeman, *ibid.* iv, 13 *et seq.*, 36 *et seq.* It was only in punishment for later rebellion that they lost their holdings, and some English thanes were never displaced; cf. Powell, in *Traill, Social England*, i, 240.

⁷ The most violent and oppressive Germanic invaders are supposed to have been the Vandals, and yet they doubtless retained for the administration of the government the trained Roman officials; Hodgkin, *Italy and her Invaders*, ii, 263. The Ostrogoths were more liberal in their treatment of the Romans (*ibid.* iv, 250, 271, 282); and the Franks still more liberal; Brunner, *Deutsche Rechtsgeschichte*, ii, 202.

up antagonism between the classes. Even where the differences between the social ranks seem to be racial, it would be hazardous to resort to the race theory in explanation; for such a condition could be produced in the course of generations by different modes of life, education, nurture and marriage regulations of the nobles and commons respectively.¹

The study pursued thus far will enable us to understand how there came to be social classes at Rome before the beginning of conquest. But for a long time after the Romans began to annex territory we may seek in vain for a distinction between conquerors and conquered, like that which we find in Laconia. We are forbidden to identify the *plebs* with the conquered and the patricians with the conquerors by many considerations mentioned above—for instance, by tradition, by the derivation of several patrician *gentes* from various foreign states, by the fewness of the patricians and by the fact that the latter show no differentiations of rank, such as we find among the conquering Spartans; they were not a folk but a nobility pure and simple. We are to regard Rome's early annexations of territory and of populations not as subjugations, but as incorporations on terms of equality. The people incorporated were of the same great folk, the Latins, or of a closely related folk, the Sabines. Accordingly they were not reduced to subjection, but were admitted to citizenship, to the tribes and the *curiae*, and their nobles were granted the patriciate.² Only communities of alien

¹ Featherman, Social History of the Races of Mankind, ii, 354; Tarde, Laws of Imitation, 238, n. 1, 239; Hellwald, Kulturgeschichte, i, 175 *et seq.*; Schurtz, Urgeschichte der Kultur, 149; cf. Demolins, Comment la route crée le type social.

² The idea that the primitive community is essentially illiberal with its membership, especially propagated by Fustel de Coulanges, Ancient City, is erroneous. For the mingling of conquerors and conquered, see *supra*, p. 524, notes 3 and 4. On the ethnic heterogeneity of states in general, see Gumplovicz, Rassenkampf, 181. The laws of Solon granted citizenship to alien residents who were in perpetual exile from their own country, or who had settled with their families in Attica with a view to plying their trade; Plut. Sol., 24. Under his laws, too, a valid marriage could be contracted between an Athenian and an alien; Hdt., vi, 130. The Athenians, like the Romans, believed that many of their noble families were of foreign origin. In Ireland "strangers settling in the district, conducting themselves well, and intermarrying with the clan, were after a few generations indistinguishable from it;" Ginnell, Breton Laws, 103. Nearly the same rule holds for South Wales; Seebohm, Tribal System in Wales, 131.

speech, like the Etruscan, or distant Italian communities, like the Campanian, were ordinarily given the inferior *civitas sine suffragio*; and this restricted citizenship does not appear in history before the middle of the fourth century B. C.

The analogies offered in this paper are useful if only for proving that the conditions they illustrate are not impossible for early Rome. By similar comparative study it would be practicable to illustrate in detail the statements of our sources as to the organization of the *plebs*, as well as of the patricians, in tribes and *curiae*, the participation of the clients and plebeians in war and in politics and the deterioration of the rights of the common freemen through the strengthening of the aristocracy—all of which are rejected by eminent modern historians who merely imagine them incompatible with primitive conditions or with a rational theory of constitutional development. The inquiry has been pursued far enough, however, to indicate that from a comparative-sociological point of view the conception of early Rome handed down to us by the ancients, whatever may have been their ultimate authority, is sound and consistent, and to suggest that for the period before the passing of the Hortensian law, which completed the equalization of social ranks, the history of the constitution and of political struggles should be so restated as to make it accord better with the ancient view.

GEORGE WILLIS BOTSFORD.

To the Germans before their settlement within the empire the idea of an exclusive community must have been foreign; for as yet the individual was but loosely attached to his tribe. Persons of many tribes were united in the *comitatus* of a chief; the two halves of a tribe often fought on opposite sides in war; a tribe often chose its chief from another tribe. Intermarriage among the tribes was common, even between Germans and Sarmatians. A single tribe often split into several independent tribes, and conversely new tribes were formed of the most diverse elements; Seeck, Geschichte des Untergangs der antiken Welt, i, 209, with notes; Kaufmann, Die Germanen der Urzeit, 136 *et seq.* Under these circumstances the primitive German community cannot be described as exclusive. In like manner our sources unanimously testify to the liberality of early Rome in granting the citizenship to strangers. It is no longer possible to oppose to this authority the objection that such generosity does not accord with primitive conditions.

REVIEWS

Russia and its Crisis. By PAUL MILYOUKOV. Chicago, The University of Chicago Press. 1905.—xiii, 589 pp.

The name of Professor Milioukov has become quite familiar to American readers. He is known as one of the leaders of the Constitutional Democrats. But the Russian thinks of Pavel Nikolaevitch Milioukov not as a politician primarily but rather as one of the ablest and most learned living Russian historians. His many monumental works on the reforms of Peter the Great, the history of Russian culture, Russian historiography, etc., place Professor Milioukov among the foremost historians of our age. It is therefore no small privilege for the English-reading public to possess in English a book on Russia written by so great an authority.

Since the beginning of the Russo-Japanese war a number of books have been published discussing Russian affairs written by newspaper men and by more or less well-informed travelers. These books have no scientific value whatever, and the English-reading public has had to rely for sound information about Russia on the well-known works of Wallace and Leroy-Beaulieu. Milioukov's book is not particularly well written, and in the opinion of the reviewer is ill-proportioned; yet it is beyond doubt the best, most instructive and most authoritative work on Russia ever published in English.

The "crisis" to which the title refers is not the crisis of today. Parts of the work went to the printer as early as 1903. The book therefore does not deal with the present moment. Milioukov, however, discusses so thoroughly the origin and development of the chief factors of the present crisis that the work is of permanent value and at the same time most illuminating even so far as the happenings of the day are concerned.

The volume is divided into eight chapters. The first contains a comparison of Russia and the United States. The other chapters tell us about the origin and fate of national self-consciousness and nationalistic theories in Russia, the religious tradition, the political tradition of the government, liberalism and socialism in Russia, and the "Crisis and Urgency of the Reform," as the last chapter is entitled.

In these few chapters all the important elements of the Russian

tragedy are dealt with exhaustively and objectively. Professor Miliukov introduces the reader to the two Russias: that of Plehve, the official Russia, which regards the country as a conquered land; and the other Russia struggling for freedom. To the American, accustomed to conceive of the government only as representing the will of the people, this Russian dualism, the two Russias in one territory, is something difficult to comprehend. How great is the antagonism between the government and the people is illustrated by the following quotation:

One of the saddest results of the abnormal conditions of Russian political life is that public disasters are needed to bring about periods of political revival. The Crimean defeat we have mentioned as the signal of the era of the great reforms of Alexander II. The famine of 1891 started a movement—Stepniak's foresight was clear and true—which has not yet ceased, though it has not found a satisfactory issue. No wonder, then, that Russian patriots sometimes are brought so far as to look forward to some fresh disaster to rescue Russia from the deadlock in which she now is. One can imagine how great the political tension must be in order that this mode of thinking, which seems so utterly unpatriotic, may serve as a distinctive feature of the highest patriotism in Russia. [A footnote informs us that these lines were written before the Russo-Japanese war began.]

Of course it is under very unusual and extreme circumstances that enlightened Russian patriots have prayed for national disaster. But under all circumstances an abyss divides the patriotism of the "intelligencia" from the official governmental "patriotism" and nationalism.

The official nationalism is so important an element in Russia's political life that a whole chapter is devoted to the subject, where the reader will find the evolution of the slavophile doctrine down to the Pobedonostseff-Leontyeff-Alexander III theory, program and policy.

Interesting and enlightening to the American reader will be Miliukov's chapter on "The Religious Tradition." The author gives a very scholarly and vivid picture of the character and history of the Russian national church, of dissent, of the origin and development of the various sects. The author is of the opinion that Russia is on the eve of a religious reformation.

The chapter devoted to the political tradition deals proportionately a little too much with ancient history and the comparative history of feudalism, but it gives a good idea of the origin of Russian autocracy and sketches its development down to the period of the present reigning czar. This last stage might be characterized as autocracy gone mad—its *reductio ad absurdum*. Very instructive is the chapter on

liberalism. It gives us a brief history of Russia's intellectual development in the nineteenth century. The reviewer can not agree with Professor Milioukov's criticism of Miliutin's and Cherkassky's influence on the abolition of serfdom. There is no reason to find fault with the course of the government in paying little attention to the reactionary drafts of the emancipation law as worked out by the provincial landlord committees (pp. 266-267). This, however, is an unimportant detail. The history of Russian liberalism is followed by a remarkable chapter entitled "The Socialistic Idea," which contains answers to many questions in which the American reader is interested. This chapter would settle many curious current notions about the "Mir," "nihilism," and different types of Russian revolutionary socialism. In the last two chapters the reader will find a sketch of the inner political situation up to Red Sunday.

Since the memorable slaughter of the peaceful workingmen who went to their Czar with a petition, much has changed in Russia. Liberties have been granted and withdrawn, massacres openly organized with the knowledge and help of the government, whole country districts devastated and covered with ashes by punitive expeditions, a Duma convoked and dispersed and political self-consciousness propagated and carried to the home of the poorest toilers in country and town. The printing press has not been able to keep pace with the rapid tempo of events and the spread and development of political parties, tenets and ideas throughout Russia. Professor Milioukov gives naturally no information about the eventful year that has passed since the publication of the book. But the events of the day will be more intelligible to those who have read this admirable book.

VLADIMIR G. SIMKHOVITCH.

COLUMBIA UNIVERSITY.

A History of Egypt. By JAMES HENRY BREASTED. New York, Charles Scribner's Sons, 1905.—xxix, 634 pp.

For the first time we have in one volume a history of Egypt worthy of the name; a history based on the latest results of archaeological research, written by a man whose knowledge is wide and accurate, whose conceptions of human society are a product of comparative study and the scientific spirit and who has, withal, the literary gift. It is a volume to which the student can turn for information and which the average intelligent man can read for pleasure, as he can read his Gibbon or his Parkman.

The amazing growth within the last twenty-five years of our knowledge of the earliest civilizations is vividly brought home to one who turns Professor Breasted's pages and compares them with any important work which, no longer than a decade or so ago, was accepted as "advanced" within its class. There is no better proof that our acquaintance with any ancient people has emerged from a speculative stage and taken on the quality of reality than we have when a certain sense of queerness disappears from the subject-matter. So long as Egyptian civilization awakened in the historical student a feeling of something apart and strange, we knew that we were not yet in close touch with the vital facts. As depicted in Professor Breasted's pages, Egyptian life has ceased to be queer. It is like the human life that we know. Social conditions, industry and politics present familiar aspects. The history of the people of the Nile valley unfolds in a systematic evolution like the history of the people of the valley of the Seine or of the Thames. If we did not happen to know that it is the history of a time long ago, we could easily imagine that we were reading of scenes and events in any generation before the invention of the steam engine.

Professor Breasted's survey is comprehensive. The introduction, book i, includes a careful study of the land, of the sources of our knowledge of its population and history and of that earliest Egypt of the prehistoric period which is of deep interest to the anthropologist. In book ii we have a remarkably complete picture of the Old Kingdom, in which civilization was born, of its religion, its early industry and art, the early social order and the political system.

That early kingdom of the north declined, and with the rise of Thebes and the Middle Kingdom a feudal age was ushered in. As the Old Kingdom was essentially like primitive kingdoms everywhere, in Europe and in Asia as in Africa, so was the feudal age in Egypt essentially like the feudal age in Europe and like the feudal age that has but recently passed away in Japan. This intensely interesting subject is the chief theme of Professor Breasted's third book.

In book iv we follow the Hyksos invasion, the subsequent recovery of Thebes and the expulsion of the Hyksos and the rise of the Empire. Admirable is the treatment of the transformation of society and religion by the imperial evolution, with its policy of militarism and its centralized administration. The student of sociology would not waste his time who should read, in connection with his perusal of books v and vi, Mr. Spencer's exposition of the evolution of political institutions, especially his chapters on political integration and "The Militant Type of Society." The real history of Egypt, as we now know it, is an exceedingly specific verification of Mr. Spencer's broad generalizations.

In book vii we enter upon the period of decadence, the fall of the empire and the supremacy, first, of the Libyans, then of the Ethiopians, and, finally, of Assyria. Book viii, on "The Restoration and the End," traces the history through the final struggle down to the creation in the East of the great empire of Persia.

The student will look in vain for any other one work so well adapted as this volume is to give him his first broad ideas and impressions of the beginnings of civilization and of the great general tendencies of social evolution which have been exemplified in the development of all peoples, ancient and modern. For such purposes this is a foundation book. It presents a remarkably complete picture of the social evolution of one great people, in some respects the greatest people of history, from the moment of its emergence from the tribal life of barbarism, through every stage of its religious, economic and political development, until its final disintegration. Acquainted with this history, the student has a basis for comparative study. He is equipped with facts and with concepts of forms and tendencies which he can carry with him into any field of historical research and into the broad realm of sociological generalization.

FRANKLIN H. GIDDINGS.

The Political History of England. In twelve volumes, edited by HUNT and POOLE. Volume II, 1066-1216. By GEORGE BURTON ADAMS. New York. Longmans, Green & Company, 1905.—x, 473 pp.

Messrs. Hunt and Poole have undertaken the editorship of a new political history of England, summing up the results of recent scholarship so far as they bear upon the narration of political events. Though they state in their preface that "notices of religious matters and of intellectual, social and economic progress will also find place in these volumes," chronological and political concepts dominate the selection, arrangement and presentation of the facts. In short, this work does not depart essentially from the devices of the older historians such as Lingard. The fertile and suggestive methods of economics and sociology have made practically no impression on the designs of the editors. Although this may be a matter for regret, their enterprise must be judged according to the schemes of the projectors.

The second volume of the series, covering the period from the Norman Conquest to the death of King John, by Professor George Burton Adams, is a discriminating, accurate and for the most part rigidly

objective piece of work. With a sound sense of values, the author has weighed and marshalled the conclusions of many scholars in his field; he has shown the mature judgment of an independent worker in the consideration of his materials; and, despite hampering and artificial chronological limitations, has presented the whole in a clear and measured fashion. His characterizations of men and descriptions of events are tempered by a steady and persistent reference to facts which gives a uniform sobriety to his style, but inspires confidence in his conclusions.

The interest of the author, however, is by no means wholly confined to political affairs, for woven into the chronological narrative there are sections covering practically every important institutional question of the period. Anglo-Norman feudalism, the state-church controversies, the administrative and constitutional measures of Henry I and Henry II and the issues involved in the quarrel between John and the barons are all discussed with the fullness which the compass and nature of the volume admit. Unfortunately, the brevity of the treatment of certain topics such as the scutage has prevented the adequate exposition which their technical difficulties require. The book as a whole, however, is admirably proportioned and the studious distribution of emphasis shows that brevity has not meant haste. On institutional as on other topics, the purpose of the writer to give the mature results of recent scholarship is consistently maintained. Where the decided opinions of recent controversialists are admitted as evidence, they are for the most part accepted with that reserve and caution of which Dr. Stubbs was undoubtedly master. There is no attempt at definiteness and finality where evidences do not warrant. In other words, it was Professor Adams's function in the preparation of this volume not to break new paths but to reflect the traditional, conservative and scholarly views on the period as they now stand, and he has successfully accomplished his task.

Notwithstanding this fact, there seem to be several points in Professor Adams's conclusions which are open to question. We are told (p. 18) that "political feudalism" had never grown up in the Saxon world, and that we can hardly affirm with any confidence that it was in process of formation in England before the Conquest. This "political feudalism" is characterized "as that form of organization in which the duties of the citizen to the state had been changed into a species of land rent." This seems to assume that there were "state" and "civic duties" in some modern sense even before the Conqueror's day. Now if we leave aside all modern theory and terminology and fix our attention on the concrete relationships and practices which made up Anglo-Saxon "institutions" and then compare them with the relationships

and practices which were the component parts of Anglo-Norman feudalism, it is hard to discover any fundamental differences in kind. Moreover, Professor Adams appears to overlook the fact that our scanty materials on Anglo-Saxon feudalism will not permit anything like a definite picture of that system in either its economic or its political aspects (if such sharp distinction be allowable). On the whole it would be best to avoid as far as possible the use of the terms of modern law and political science in the discussion of feudal institutions and to confine ourselves to a description of concrete practices; we shall then be nearer to reality.

Professor Adams implies (p. 40) that the bishops had no independent jurisdiction over secular persons prior to the Conquest. This rests on the assent which absence of authority gives and overlooks some slight evidence to the contrary (Stubbs, vol. i, p. 254 and Böhmer, p. 40). His interpretation of William's decree separating spiritual and temporal jurisdiction apparently does not go beyond the conclusions of Dr. Stubbs and consequently leaves much that is indefinite. The translation of the term "hundret" as hundred court leaves untouched certain aspects of the problem itself. According to II Canute 18, the bishop exercised in the shire court the same authority as III Edgar 5 gives him in the hundred court. If William's ordinance cut away only the jurisdiction in the hundred court, what became of the county court jurisdiction? Does not the following clause, from the decree, "nec causam quae ad regimen animarum pertinet ad judicium secularium hominum adducant," imply the extension of the separation to the county as well as the hundred court? Moreover the word "hundret" may mean "court" in general. This is not put forward as a solution but rather as a suggestion on some unsolved problems connected with the decree.¹

Our author believes that the men of the vill probably attended the Anglo-Saxon county court (p. 67) in spite of the fact that the only evidence for it is from a twelfth century source of questionable value which does not even regard it as the normal but as the exceptional practice (*Leges Henrici Primi*, vii, 7).

Had Vinogradoff's *Growth of the Manor* come to hand before he sent his volume to press, Professor Adams would doubtless have modified his rather strict limitation of the Doomsday survey to the single

¹ Since this review was in type the late Dr. Stubbs's *Lectures on Early English History* has appeared, and on p. 89 it is held that the writ applied to both hundred and county courts.

definite purpose of taxation. The distinguished Russian author points out that there was another very important design in the preparation of the Survey—that of providing the king's officers with exact clues to the personal nexus of the different tenements. The usual severe judgment is rendered on William Rufus (p. 80). This rests on the accounts which were written for the most part by his enemies, who opposed that absolute power which Professor Adams (p. 56) admits was the explanation of English liberty. Perhaps William Rufus may yet be rehabilitated. The election story about King John (p. 394) does not seem worth very serious consideration in view of the practice, not only in the case of John himself, but of all other English kings. Moreover we must keep the modern content of the words "elect" and "choose" out of our translations. According to the Anglo-Saxon chronicler (An. 1017) "*Canute was chosen king!*"

Some exceptions may also be taken to Professor Adams's treatment of Magna Carta. He rightly declares that the document is feudal from beginning to end, but contends that some of the provisions of our civil liberty are present almost in their modern form. He enumerates these provisions: "That private property shall not be taken for public use without just compensation, that cruel and unusual punishments shall not be inflicted nor excessive fines imposed and that justice shall be fair and free to all." Now if we carefully analyze out the concrete modern practices covered by these general principles and also study the history of these concrete practices in England since Magna Carta we shall doubtless find that neither in content nor in effect did they have the modern meaning. For example the Charter did not extend fair and free justice, such as it was, to "all" or even half of the nation. The villeins who composed probably three-fourths of the nation were excluded from the benefits of these principles because their "justice" was meted out for the most part in courts not affected by the Great Charter. Furthermore the Charter did not extend to the villeins compensation for their horses and carts taken for transport duties (Clause 30). Though the views of Mr. Jenks and Mr. McKechnie came too late for his use, Professor Adams's usual caution should have led him to qualify his terms more rigidly, especially in view of the fact that he is writing for laymen in law and history.

Finally it seems to the present reviewer that Professor Adams has given far too much importance to Clause 61 of the Great Charter, which appears to him to recognize something like a legal insurrection to maintain rights as "the true corner-stone of the English constitution." This clause was not repeated in the confirmation of the charter

in 1216, and surely it cannot be held that insurrection even to make the king observe the law was ever a part of the legal doctrines or practices of England. This savors of the old Whig theory of an original contract and an original law which the people could legally force the king to observe. This is unhistorical because it ignores the actual course in the development of the law and, above all, the facts that the law is in final analysis the embodiment of concrete interests, that concrete interests arise with the changing forms of economic and social life and that however they may be clothed in the garb of "precedent" or of "constitutional" or "natural" law, their assertion constitutes innovation and revolution in so far as it wrests from the sovereign or predominant class a portion of their privileges or prerogatives. The "right" of the English people to coerce their sovereign is in reality nothing more than the "right" which all people have to assert and realize their interest—that is the "right" of desire, determination and might. This, however, is theory, and does not in any way invalidate Professor Adams's service to students of English history.

CHARLES A. BEARD.

Civil War and Reconstruction in Alabama. By WALTER L. FLEMING, PH. D. New York, The Columbia University Press, 1905. 805 pp.

Ever since the disgraceful downfall of the policy of Reconstruction, its authors and supporters have manifested a feverish anxiety to cover over the whole period in question with an act of oblivion, admonishing the coming historian, with finger on lip, somewhat in this wise : "Our country, right or wrong, you know. Her errors, pass over in silence. Her paroxysms of madness or folly, tell not to posterity. Why wash the dirty linen of the nation in public? The horrors are over and gone. Why disinter the dead past to offend the nostrils of the living?"

Not so, we protest. The men who forced unqualified negro suffrage and white disfranchisement on the subjugated states of the South ought not to escape the condemnation of history by smothering their shame in apologies and endeavoring to hide the consequences of their misdeeds by appeals to the love of country. And the great merit of the book before us is that it renders all such efforts forever vain. With impartial but unsparing hand the author lays bare the transcendent iniquity perpetrated on one of these states by the two-thirds majority of the Congress of the United States under the forms of law. And he does his work in such fashion—every questionable statement backed by

a wealth of authority placing it beyond dispute—that it cannot be hidden and will be read.

A government was forced upon the state of Alabama under which every adult male negro—just emancipated and but half civilized—was given the right to vote and every white man who would not swear to accept not only the civil but the political equality of the negro was disfranchised; and this book shows how it was done. In the first place, the military ruler for the time being divided the state into forty-four election districts and appointed for every one a board of registration, consisting of two whites and one negro, of the following description:

Since each had to take the "iron-clad" test oath, practically all native whites were excluded, those who were on the lists being men of doubtful character and no ability. There were numbers of Northerners. For most of the districts the white registrars had to be imported. It is not saying much for the negro members that they were much the more respectable part of the board . . . [p. 488].

The registrars were paid so much per head and mileage "to hunt up voters" and persuade them to register. They were empowered to revise the lists and add to or strike off such names as they thought proper (pp. 489, 491). The first registration showed: whites, 61,295; blacks, 104,518; total, 165,813; black majority, 43,223. Normally, according to the census of 1866, there were 108,622 whites over twenty-one years of age and 89,663 blacks—a white majority of 18,959. Consequently, over 47,000 whites were disfranchised or failed to register and there was an over-registration of blacks of more than 14,000 (p. 491, note). The election for delegates to a convention to frame a constitution lasted four days—October 1-4—"the first time the late slaves were to vote, while many of their former masters could not." And the author delineates the process. Orders were sent to the plantation negroes to go and vote; "if they did not they would be reenslaved and their wives made to work on the roads and quit wearing hoop skirts." Threats of punishment were sent out from headquarters if they did not obey. "The negroes came into the city by thousands in regularly organized bodies, under arms and led by the League politicians, and camped about the city waiting for the time to vote. . . . They did not know, most of them, what voting was." At another place,

The negroes were driven to town and camped the day before the election began. There was firing of guns all night. Early the next morning the local leaders formed the negroes into companies and regiments and marched them around with shot guns, muskets, pistols and knives to the court house.

Three thousand of all ages from fifteen to eighty. No whites were allowed to approach. When drawn up in line, each man was given a ticket . . . and no negro was allowed to break ranks,

until the ticket was voted. In another county, "the Loyal League officers lined up the negroes early in the morning and saw that each man was supplied with the proper ticket. Then the command 'Forward, march!' was given, the line filed past the polling place, and each negro deposited his ballot." Twice more during the day "a bugle blew to repeat the operation" and the negroes present voted again. "Anyone voted who pleased and as often as he pleased" (pp. 514, 515). "The registration lists were not referred to except when a white man offered to vote." "One negro at Selma held up a blue [Conservative] ticket and cried out 'No land! no mules! no votes! Slavery again!' Then holding up a red [Radical] ticket he shouted: 'Forty acres of land! a mule! freedom! votes! equal of white man!'" (p. 515). "Another darkey was told to put the ballot in the box. 'Is dat votin?' 'Yes.' 'Nuttin more, master?' 'No.' 'I thought votin was gittin sumfin.' He went home in disgust" (p. 516). For the convention and for delegates 90,283 votes were cast—whites 18,533, blacks 71,730. Against the convention but 5,583 were cast, all white. 37,159 registered whites failed to vote, and (what is much more astonishing, considering the efforts of the Loyal League) 32,788 registered blacks (p. 491). Out of the one hundred delegates elected, but two were Conservative, so-called (p. 516). The ninety-eight Radicals "were a motley crew, white, yellow and black. The Freedmen's Bureau furnished eighteen or more. There were eighteen blacks." Thirteen registrars had certified to their own election. "No pretence of residence was made by the Northern men in the counties from which they were elected;" several had never seen them,

a slate being made up in Montgomery and sent to remote districts to be voted for. Of these Northern men or foreigners, there were thirty-seven or thirty-eight . . . The native whites were for the most part utterly unknown . . . Of the negro members two could write well and were fairly well educated, half could not write a word, and the others had been taught to sign their names and that was all (pp. 517-518).

This "Black Crook" convention, as it was called in derision (p. 491), managed in a month to frame a constitution which was ordered to be submitted to the voters on the fourth and fifth of February, 1868 (p. 492). Since the act of Congress required for a valid ratification that at least one-half of the registered electors must have voted one way

or the other at the election, when the revision of the lists was made by the registrars, the whites resolved to swell the registration to the limit, so that they might defeat the constitution by staying away from the polls. Accordingly, there was an increase in their number of about 14,000, while the number of the blacks, by the striking off of names for which no radical had the face to stand sponsor, was decreased about 9000—the total revised registration being about 170,000 (pp. 538-9). These disclosures spread alarm among the partisans of the constitution and they employed the most desperate means to bring out, as nearly as possible, the entire registered negro vote, amounting now to but ten thousand more than the requisite one-half of the total registration. In the first place, they extended the period of the election from two to four days; and, a storm coming on the first day, instructions were sent out to keep the polls open until the close of February 8 and to receive the vote of any person who had registered anywhere in the state. Indifferent black men were driven to the polls.

Many negroes voted rolls of tickets . . . They voted one day in one precinct and the next day in another, or several times in the same place . . . Hundreds of negro boys voted . . . The sick at their homes sent their proxies by their friends and relatives. In one case, Radicals voted negroes under the names of white men who were staying away [p. 540].

Notwithstanding these outrages, the constitution failed of ratification. But little over 71,000 votes were cast altogether—all but about 1000 for ratification—13,000 short of one-half the total registration. Only about 6000 whites voted at all. And, what was ominous of the future, the black vote was at least 15,000 behind the registration; a falling off caused, as our author states, by "the chilling of the negro's faith in his political leaders because of their broken promises about farms, *etc.*; " by the disgust of the better class with carpet-baggers and scalawags and by the persuasions of their old masters (pp. 541-2).

This humiliating result was in due course reported to the Congress by General Meade, the military commander of the district. "I am satisfied," he said, "the constitution was lost on its merits;" "was fairly rejected by the people." "The election had been quiet," he further said, "no disorder of any kind" (p. 543). The radical leaders in both Houses were greatly chagrined; but, at first, they recoiled from flying in the face of their own act. Even "Old Thad." acknowledged "that to admit the state against her own law . . . would not be doing justice in legislation." Nevertheless, he subsequently reported a bill for the admission of the state with five others, which was passed by the

House. Trumbull reported it to the Senate with Alabama stricken out. Wilson moved to reinsert the state on the ground that "she was the strongest of all the states for the policy of Congress and it would be unjust to leave her out." Sherman said: "It was absolutely necessary to admit Alabama in order to settle the Fourteenth Amendment before the presidential election." The state was reinserted. The bill was passed. Africanized Alabama was dragged into the Union against the consent of a majority even of her packed electorate; to say nothing of the unanimous protest of the intelligent and property-holding classes of her citizens.

To plead high patriotic motives on behalf of the doers of this foul deed is idle. The debauchery of the elective franchise, the degradation of representative government, the defilement of one of the states of the Union were as nothing to them, provided the outcome of the process was the intrenchment of their party more firmly in power.

DAVID MILLER DEWITT.

KINGSTON, N. Y.

The Domestic Slave Trade of the Southern States. By WINFIELD H. COLLINS. New York, Broadway Publishing Co., 1904.—154 pp.

In seven short chapters the author of the monograph under review discusses the following topics: the foreign slave trade of America; the development and extent of the domestic slave trade; the kidnapping of free negroes; the breeding of negroes for sale, and the state laws relating to the domestic slave trade. The book is based mainly upon the accounts of anti-slavery travelers and the material collected by the *Liberator* relating to the slave trade. The value of much of this material is extremely doubtful, but Mr. Collins seems to have been aware of this, and his judgment has saved him from the absurdities usually committed by those who endeavor to write from such sources. Sometimes the statistics given are conflicting, and no attempt is made to explain the variations. The census statistics, however, are used to good effect. There are numerous typographical errors, and often names of authors and books are given incorrectly.

The causes of the development of the domestic slave trade are clearly set forth. These were the abolition of the foreign slave trade, expansion to the West, the growth of the cotton industry and the industrial decay of the border slave states. Before 1820 the trade was of slight extent. Between 1820 and 1830 the selling states were Virginia, Mary-

land, Delaware, North Carolina, Kentucky and the District of Columbia. During the next ten years South Carolina and Missouri were added to the list of selling states. Slavery was thus pursuing its natural and inevitable course toward extinction in the border states. It is a fact worth noting that nearly all the slave states before the thirties and forties had stringent laws against the importation of slaves for sale. These laws were repealed by the buying states as the cotton plant spread over the South and abolition agitation over the North, but several of the slave states had prohibitive laws until the last.

The discussion of the extent of the slave trade is of particular interest. After a study of the census statistics the author comes to the conclusion that between 1820 and 1860, 735,000 slaves were carried to the lower South from the border states, and of these 296,000 were sold, the remainder being carried by immigrating owners. The decade 1820-1840 was the period of greatest trade, the sales averaging 10,600 per year. A noticeable fact is the great difference between the price of slaves in the border states and in the lower South. Any slave trader could soon make a fortune.

Mr. Collins disposes of the tradition about the breeding of slaves in the border states for sale to the South. In the first place it would not pay—a good five-year-old horse was worth as much as an eighteen-year-old negro and cost less per year to keep up. Secondly, had the selling states been breeding for sale, the census should show a larger proportion of children to adults in these states (since the slaves sold were usually adults) than in the buying states. The census shows the reverse is true. The fact is only a part of the surplus increase was sold South. The planter in the border states had more slaves than he knew what to do with—he was often eaten out of house and home by them. There was no profitable work for them to do. John Randolph predicted that the time would come when the "masters would run away from the slaves and be advertised by them in the public papers." Several important points, in this connection, are left undeveloped; but on the whole, the discussion of the economic and social hindrances to the breeding of slaves for the market is quite satisfactory.

WALTER L. FLEMING.

WEST VIRGINIA UNIVERSITY.

The Foundations of Sociology. By EDWARD ALSWORTH ROSS.
New York, the Macmillan Company, 1905.—xiv, 395 pp.

In this volume the author of *Social Control* has made a thorough and searching inspection of the fundamental masonry of sociology up to date. He finds that the foundations have been laid not in the shifting sand but in scientific rock. The chapters have a varying value, but on the whole are fine pieces of analysis and criticism. There is a strength and breeziness and homeliness of style which suggest the great Western environment of our country. There is a simplicity of expression and clearness of statement of which sociology has frequently stood sorely in need. The book is a series of essays. They are by no means unrelated, but it is of course difficult to make of them a scientific unity. Nevertheless it would have been easy to have placed chapter four, upon the unit of investigation, and chapters five and six, upon the various social groupings, before chapter three, which deals with the social laws that are slowly coming to light as a result of the study of process and grouping. So the tenth and eleventh chapters, on the causes of race superiority and the value rank of the American people, are important, but in the way of addenda to the preceding contents of the book.

A preliminary inquiry into the scope and task of sociology convinces the author that there is rapidly forming one master science of social life. The relation of this master science to certain of the social specialisms is discussed. Particularly is it made clear that, for light upon many questions, economics must cross the frontier into sociology. One might go further, I think, than the author seems anywhere inclined to go and defend fairly the original and the increasing subordination of the true economic motive to the social instinct. Certainly that higher product, social intellectualism, is everywhere winning in our time the battle against economic materialism. The mind of the many is overcoming economic greed.

I do not think that Professor Ross's conclusion with respect to the unit of investigation in sociology is so happy or so sound as most of his conclusions are. He rightly insists that this unit has often been too large, that it can not be a process or a product, that we must select a simple relation or interaction. But he lends aid and comfort to the notion that sociology may have several ultimates as units of investigation and not one, as in biology, for example. He avers that we can not take the individual as our unit unless we rob anthropology of its unit. Why should not anthropology and sociology have the same unit, and psychology, too, for that matter? The psychologist is particularly

concerned with the individual states of consciousness, the sociologist with social states of consciousness and the anthropologist—within his sphere—is concerned with both the individual and the social states. The anthropologist studies man in his individualistic aspect as an animal with certain mental and physical characteristics, but no small part of his interest is centered in the sociological description of primitive peoples. Sociology proper builds upon anthropology and psychology, but follows in their course of evolution the developing social states of consciousness. Everywhere, for sociology, the potentially social mind or the actively social mind of the individual is the unit of investigation. The most elementary thing which the sociologist considers is the interaction of mind in its entirety with mind.

A carefully critical discussion of the mob is carried in the next chapter into a study of other forms of association, the mass meeting, the deliberative assembly, public opinion. Professor Ross makes it admirably clear that the analogy of the crowd is often unsafe, that the possibilities of rational control are far greater in the higher groupings. If the group never comes together in close physical contact, or if, coming together, it periodically breaks up, there is time for rational inhibition to intervene and do its perfect work. We are led to see that society is not organized like a mob, that it gives increasing scope to reason, that, as progress continues, the orator and the prophet come gradually to occupy a subordinate place, that the leadership of the future is the leadership of clear thinking.

In the third essay we have an excellent summary and an unusually acute criticism of the generalizations and laws which have already been formulated by sociological writers of the first rank. An exact inventory convinces the author that sociology is a fundamental and comprehensive discipline uniting at the base all the social sciences. One is inclined to think that more can be said for the genetic interpretation of sociology than Professor Ross is willing to concede. Even where different environments tinge the social evolution of different peoples "with something local and 'distinctive,'" the great subjective factors clearly show through in an orderly succession of higher and higher forms.

I am inclined to think that the chapter on recent tendencies in sociology is the strongest in the book. It reveals a fine sanity and fairness and philosophic insight. It is a strong and sympathetic analysis of the views of the great sociologists of the last decade or two. It is perhaps the best brief critical essay that we have upon their work. If the implications of this chapter could be written into other portions of the book, it would be, I think, an advantage.

There are some of us who dissent strongly from a classification of the natural and cultural desires as social forces. As grouped by both Professor Ward and Professor Ross, they are for the most part only individualistic forces. There exist in society large numbers of persons with an appetite for food, sexual desire to reproduce, parental feeling, who are emotional, intellectual and have a limited sense of duty, but who are nevertheless absolutely non-social beings in any true sense. Egoistic, self-centered, with a hand against every other man—no matter how they might increase upon the earth, they could not build a true society with all eternity to work in. These natural and cultural desires are forces which perpetuate life and intelligence, but they are not even *socializing* forces until they are shot through with the consciousness of likeness, of the possibility of agreement, of friendliness, of common interest.

Some of us think, too, that it is better scientific usage to distinguish between socializing and social forces rather than between original and derivative social forces as in Professor Ross's classification. Those forces of individual desire and feeling and thought which are before society or outside of it, which work upon society, which tend to create a social nature in the individual and are all the time working toward social results—these are true socializing forces. On the other hands the real social forces are those which originate in society, which are direct products of the social mass organization. They usually have a socializing tendency but not necessarily. They may work towards the disruption of society. An example of such a disintegrating social force may be found in the action of the mob in the days of the Paris Commune.

It is particularly interesting to observe the broad outlook which Professor Ross has upon divergent schools of sociology. The antagonism usually reduces itself in his pages to a difference in emphasis upon important phases of the whole subject. The *Rassenkampf* and the *Klassenkampf* theorists live in the countries where the infra-social struggle is still extraordinarily keen. Spencer and Tarde and Giddings live in a society approaching harmony. Speaking of schools of thought, it is, I think, becoming clear that scientific sociology will escape the danger, to which it has been subject, of splitting into two warring branches like the theological Calvinists and Arminians of old. Substitute the sovereignty of the cosmic process for the sovereignty of God and the influence of the reason of man for the dogma of the freedom of the will, and sociology has the same philosophic dualism to face which has so mightily troubled the waters of theology. And the two

propositions are as irreconcilable in the one sphere as they are in the other. But we must at least attempt to broaden social theory until it includes them both. We can not be content to study only those matters which have human volition as their proximate cause. We must also regard that deeper philosophy which attempts to correlate the social with the cosmic process.

Professor Ross's desire to harmonize the collision of groups and the resemblance schools is a worthy one. But perhaps somewhat stronger emphasis might have been laid upon the truth that the transition from conflict to coöperation can never be accounted for except by the original social nature of man. That is the vital fact in the whole process. We must take account of the perception of difference as well as of the perception of resemblance in the human mind. We must explain the clashing of groups as well as their merging. But the fundamental thing is not the collision of groups, but the blending of groups, and the key to this process is to be found in the study of the social intimations of the individual consciousness. The important thing to know is that the perception of resemblance conquers the perception of difference, that the consciousness of kind, broadly defined, is the essential social quality which conquers antipathy. This proposition of Professor Giddings deserves to stand side by side with the similar proposition of Henry Drummond and John Fiske in scientific ethics, that the struggle for the life of others steadily modifies and conquers the egoistic struggle for life.

Like Professor Ross's previous studies of the influence of social control upon human society, his work of analysis and criticism of the foundations of sociology deserves universal recognition as a contribution of the first order to both sociological literature and sociological science.

FREDERICK MORGAN DAVENPORT.

HAMILTON COLLEGE.

Jugendfürsorge und Strafrecht in den Vereinigten Staaten von Nord-Amerika. Von J. M. BAERNREITHER. Leipzig, Duncker und Humblot, 1905.—lxviii, 304 pp.

A trip to the United States, after extensive studies in his own country, has led the author to give to the German reading world a very interesting book on the care of juvenile offenders and criminal law in the United States. Although this subject has not yet been treated *in extenso*, one might find in German publications numerous short articles

dealing with these questions, which, now nearly settled in America, are still far from solution in Europe.

The greatest advance which has been made in this field has grown out of the recognition of the fact that dependent, neglected, defective and criminal juveniles represent a single social phenomenon in different phases of development. As there is a necessary connection between neglect of children and juvenile criminality, the evils of neglect and of delinquency should be attacked by the same methods. The moral, physical and economic education of the children of to-day will decide the fate of the generation of to-morrow.

In England and France the interest of the child is the decisive factor. The English judge has a great deal of discretionary power, and penal imprisonment for juvenile offenders, formerly the rule, is now the exception. In Germany compulsory education exists for neglected children, but the delinquents still have to feel the full force of an antiquated law, wherein the retaliatory idea of punishment is still prevalent. Liszt and his school are waging war upon this conception, but as yet the results are hardly noticeable. The tendency in those states of the Union which have dealt with these questions is to enforce compulsory education for all the children brought into court, but it is generally left to the discretion of the judge what he will do in each case.

In spite of the diversities in American society it is not difficult to find in criminal and civil law and in the various charitable institutions a certain harmony of thought and practice. The most prominent feature in recent legislation upon the subject is the differentiation of institutions for the care of children with a view to segregation of dependent and neglected children from the delinquent. Both classes, it is recognized, must receive appropriate education. Public and private institutions coöperate harmoniously, and everywhere there is a tendency to free the public institutions from the influence of party politics. It is difficult to overestimate the importance of the part played by private associations in the work of reforming institutions for juveniles. They were largely instrumental in working out the different schemes of separating children from adults in the penitentiaries and in some cases even founded special institutions where the educational idea prevailed over the retaliatory. The aim now is to prepare the children for self-support.

The whole reformatory system in the United States is still in a state of constant change. The merit system in reformatory and penal institutions, the indeterminate sentence, release on parole, the wide discretionary power of the judge as to what measures are to be taken in each individual case are features that quite astonish the author.

By an indeterminate sentence society is liberated from a criminal until the authority in whose custody he is placed is convinced that he is no longer an enemy of society. Its aim is to bring the offender back to general usefulness. The general practice is to bring juvenile offenders before the judge who introduces them to the probation officer to whose care they are assigned. The work of the probation officer is not confined to the juvenile offender alone. The officer must become acquainted with the child's parents and win their confidence in order to secure their coöperation in the discharge of his duty. Occasionally he has to find work for his wards and he must see that they live in decent places. To keep in contact with the children he generally makes them report every other week and sees them at least once a month in their homes, in school or at their place of work. In Massachusetts the probation system exists even for adults. The duration of the probation period varies; a permanent discharge may be granted for good behavior. Before granting a release it is always necessary to know about home conditions and influences.

Chicago was the first city in the United States to establish, in 1899, a juvenile court. This was done by an act to regulate the treatment of dependent, neglected and delinquent children. As this law was the first one, and all the others are based on it, a short analysis of the most important points may be of interest.

The law as first enacted was applicable to children under sixteen years; by later amendments it was made applicable to boys up to seventeen and girls under eighteen. A dependent petition is made out for a child who habitually begs or receives alms; who has no permanent place of abode; who frequents vicious company and wanders through the streets and alleys; who has no proper parental care or guardianship; who is destitute, abandoned and homeless; who lives in a house of ill repute or in a home which is an unfit place for the care of a child. Children are classed as delinquents when they are incorrigible, knowingly associate with persons of vicious character or frequent houses of ill fame, grow up in idleness and crime, absent themselves from home, habitually wander about the streets or railroad tracks at night without legitimate business, use indecent language or are guilty of criminal conduct.

The court is presided over by one of the circuit court judges in special chambers. A petition may be filed by any reputable person residing in Cook county. Probation officers have to give all necessary information to the court. At present most of the officers are under the civil service and are paid by the county; formerly a juvenile court com-

mittee paid their salaries. Some workers in charitable institutions and a number of visiting nurses have like commissions. At the police stations sixteen officers in plain clothes take care of the juvenile offenders.

From 2943 cases in 1903 the number increased to 7179 in 1904-5. Similar courts have been established in several other states, the best known being the court in Denver, which has gained a high reputation for efficiency.

A great influence upon all child-saving institutions in the United States is exercised by the National Conference of Charities and Corrections. Its influence tends towards centralization and greater efficiency of personnel.

In connection with an extensive review of Henry M. Boies's *Science of Penology* and C. R. Henderson's excellent *Introduction to the Study of Dependent, Defective and Delinquent Classes*, the author points out the close connection between science and everyday exigencies in American social policy. Theory and practice go hand in hand. In the author's opinion the results obtained must nevertheless be accepted with great reserve.

A chapter on the foundation of family law with special regard to the position of the child closes the book. The American child has an inalienable right to happiness and proper nurture. Parental power is abrogated for the child's benefit.

The whole book is very thorough, and is a much needed presentation of the progress accomplished in the care of children in the United States. Germany will, I trust, soon follow in some way along the same lines.

A valuable appendix is given consisting of a large collection of laws, decisions and opinions on the subject, mostly in English.

VICTOR VON BOROSINI.

HULL HOUSE, CHICAGO.

Nordamerikanische Eisenbahnen : Ihre Verwaltung und Wirtschaftsgebarung. By W. HOFF and F. SCHWABACH. Berlin, Julius Springer, 1906.—xii, 377 pp., with map.

This is a report by two members of the Prussian railway administration of an investigation into the organization and working of American railways made at the request of the Prussian Ministry of Public Works. The authors made an extensive journey through the United States and have published a general survey of American railway conditions, to be followed soon by more exhaustive studies of individual railway systems.

We have had many accounts of this character by foreign travelers, but none that approaches this in thoroughness of detail and in comprehension of the practical problems of railway operation. Not without reason have railway officials been charged with a lack of appreciation of the railway problem from the public standpoint. Quite as fairly, however, may it be asserted that the American public fails to understand the administrative problems of the railway manager and their bearing upon the widely-discussed questions of rates and services. That a comprehension of these practical problems by the public would be helpful toward a sane solution of problems of public control is obvious. All the more surprising is it, therefore, that no work of any value has appeared in this country which treats adequately of the railway as an industry and that the first serious attempt of this kind should be made by foreign observers.

The book is essentially descriptive and comparative. Following the introductory chapters, which describe the route taken by the authors and contain general observations upon American transportation conditions, there are chapters upon the organization and management of railways, officials and employees, relief and pension systems, passenger and freight traffic, the Pullman, express, post and telegraph services, financial operations and problems, and a brief treatment of public control.

As the work is written for German readers, the comparative point of view is kept constantly in mind, and while one may disagree at times with the conclusions of the authors, one is compelled to recognize an honest endeavor all the way through to study the situation without pre-conceived opinions and to reach conclusions from an examination of the facts. It is hardly surprising, nor is it to be regarded as a serious fault, that the authors, educated in an environment of state ownership and management, and themselves a part of the railway administration, should attribute to their situation a freedom from certain ills to which our public is subjected; yet the fact that they draw no sweeping conclusions, but recognize the advantages and defects of the systems of both countries, is an evidence of their fair-mindedness. They recognize, for example, what the United States has accomplished in the increase of the train-load and the reduction of operating expense; but while conceding the possibility of some increase in the size of their cars, they, like the English railway managers, feel that conditions of traffic are so different in Prussia as to preclude an adoption of the American practice in its entirety. In fact they have evidence to show that in many instances the Americans themselves feel that they have carried their

practice too far, and that much of the irregularity of their service and many of their serious accidents are to be attributed to the craze for the huge train-load. They comment enviously upon the uniformity of equipment of American railways in general, and show how the insistence of each German railway administration upon individuality in this respect has interfered seriously with the development of through traffic.

In the matter of rates, the authors attempt to reduce the varying conditions of Prussia and the United States to a common basis, by taking into account passenger, freight and express traffic and the compensation for carrying the mails, and after a somewhat involved series of approximations and assumptions, reach the conclusion that not only are passenger rates lower in Prussia than in the United States, which is generally conceded, but that freight rates are also lower except in the case of through rates for the long haul. Although the value of the statistical result is doubtful, the computation is not without significance in revealing clearly the diverse conditions of the two countries and the difficulties of exact comparison. Of more value are the tables of comparative rates for different products which would tend to show that Prussian industries are as favorably treated by the railways as American industries in respect to their raw materials. In fact, a reading of this book leads one to ask whether, in our glorification of the low rate for the long haul, we have not carried our admiration to the point of fetishism and have not come to feel that there is some inherent advantage and even virtue in hauling goods a long distance. This would be a fair inference from some of our recent controversial literature. That the tendency is for rates to fall in Prussia is doubtless correct, but the statement that the opposite tendency is present in the United States is based on observations extending over too short a time to warrant its acceptance. The present movement is perhaps merely temporary.

As is usual in the writings of foreign visitors, our indifference to the safety of passengers and employees as shown in the primitive condition of our safety appliances is criticised, yet not more severely than by our own railway journals. We progress slowly in the expenditure of capital upon construction that does not reward us promptly by an increase in net income.

The authors reach the conclusion that in spite of certain deficiencies, the Prussian system is well adapted to its needs, and that Prussia has not perhaps more to learn from the United States than has the United States from Prussia.

FRANK HAIGH DIXON.

DARTMOUTH COLLEGE.

Industrial Efficiency. A Comparative Study of Industrial Life in England, Germany and America. By ARTHUR SHADWELL. London, Longmans, Green & Co., 1906.—Two volumes : xiii, 346 ; x, 488 pp.

These volumes are the record of a close study of a number of industrial centres illustrative of the two great branches of competing industries, textiles and metals. In Great Britain, Lancashire and the West Riding of Yorkshire are naturally selected for cotton and wool, but the choice of the Midland district round Wolverhampton as typical of the iron trade involves a considerable amount of unfairness. Dr. Shadwell explains that he did not choose the Clyde district or the north east coast of England because they are not only industrial but great port districts, producing a combination not to be paralleled in the other countries. But it is precisely in those two localities that the British iron industry exhibits its greatest vigor, whereas the Midlands suffer from difficulties of communication and the great firms are gradually moving to the sea-coast. The Rhineland, Westphalia and Saxony are the districts chosen in Germany ; Massachusetts, Rhode Island, Pennsylvania and South Carolina in the United States.

The first volume opens with a chapter of "general comparisons." Admitting the difficulties and imperfections of generalizations and seeking to do no more than record his own impressions, Dr. Shadwell has, nevertheless, as was to be expected from so careful and clear-sighted an observer, come to some conclusions of much interest. What struck him most in America was the "frank, direct and straightforward intercourse between man and man," which he contrasts favorably with German formality and the suspicious and secretive habit of mind which he found prevalent in English industrial circles. Mutual distrust is a source of friction and a sign of weakness, but while in the author's opinion it is diminishing in England as between employers and workmen, it is increasing in America with regard to trade unionism and in Germany with regard to social democracy. On this point he agrees with many other observers who hold that an era of grave industrial conflicts is opening both in Germany and in the United States. Directness of character with the consciousness of strength which is behind it is the "fine flower of democracy," and implies a national force which, he thinks, will save the Republic despite the greed, the scramble for money and the local corruption which are sapping the public confidence. The hustling American he considers "rather a new thing," and he finds the old national addiction to "whittling" still latent in the predilection

for trouble-saving, time-wasting appliances—such as the check system for baggage. The stimulating climate of the States excites cerebral activity in certain directions such as oratory with its correlative of dislike of physical exertion, resulting in the abundant invention of labor-saving machinery. The weak side of these qualities is a tendency to slovenliness.

It is surely remarkable that so little first-class work of any kind is produced in the United States, with all its wealth, population, intelligence and intellectual keenness. . . . The same national failing is conspicuous in the factory and workshop. You see machinery racketing itself to pieces and spoiling the material in the attempt to run faster than it can; you see waste of fuel and steam, machinery clogged and spoiling for want of care and cleanliness, the place in a mess and the stuff turned out in a rough, badly-finished state. When you see this over and over again, you begin to understand why the United States, with all its natural advantages, requires a prohibitive duty on foreign manufactures which it ought to produce better itself. . . .

The Germans are slow, deliberate, careful, methodical and thorough. Some people use the word "plodding," which carries a touch of disdain; but Germany can afford to smile at it. . . . Industrially the Germans excel on the scientific side; they are not an inventive or adventurous people; they are not quick or ready in emergency; they are no pioneers in the wilderness; they require time for thought and action.

The result is an admirable industrial organization, a complete coöperation of government and individual in promoting national interests. To put it briefly the Briton in his characteristics stands midway between the German and the American. It will thus be seen that Dr. Shadwell is essentially a challenging writer, and the thin-skinned person, whatever his nationality, had better leave these volumes alone. This first chapter requires very careful study, for while it is the result of observed facts, yet the general personal views once formed have necessarily colored the narration of these facts and still more the deductions drawn from them.

The bulk of the first volume is occupied with the description of the localities visited and not only their industrial efficiency is taken into account but also what one might perhaps call their vital efficiency. There are whole pages which call aloud for quotation. The British workman who holds it a point of honor to look dirty and ruffianly on weekdays and yet is clean and tidy on Sundays and holidays; the Lancashire housewife who likes to roam the markets on a Saturday night and "look and pick"; the poisoned river Wupper at Elberfeld,

"the most damnably ill-used running water in the world"; the Carnegie country round Pittsburg—"if Pittsburg is hell with the lid off Homestead is hell with the hatches on"—these and many other pictures rise up before one's mind as one thinks back on the book. The second volume is taken up with the detailed analysis of industrial conditions under the heads of "Factory Laws;" "Factory Conditions;" "Hours, Wages, Workmen's Compensation and Insurance;" "Benevolent Institutions, Housing, Cost of Living and Physical Conditions;" "Social Conditions," "Trade Unions and Industrial Disputes;" "Pauperism and Thrift;" "Elementary Education" and "Technical Education." Throughout these chapters are full of acute criticism and while it is a personal view which is put forward it is a view based not only on reading and travel but on countless interviews with all sorts and conditions of men. The personal view of the hurried or ignorant traveler ought to be negligible, though unfortunately such views added together make up a great mass of public opinion. The verdict of a trained and unprejudiced observer is quite another matter, and it is because Dr. Shadwell is such a person that the present writer would earnestly commend his chapters even although in many cases he does not agree with the opinions put forward. Dr. Shadwell's view is always his own view, he never follows the crowd, and very often he dissents from accepted views. For example he does not agree with the Mosely commission in thinking that the position of working men is better in the States than in England, nor does he accept the high opinion generally held in England as to the efficiency of American elementary education.

His conclusion is that in many lines England, once so supreme, has been equalled and in some surpassed by her industrial rivals. This he sets down to her great prosperity which has induced a slackness both among manufacturers and workmen, a love of ease, devotion to sport, gambling and theatregoing. Of late the stress of competition has forced a reconsideration of the national position with the effect of producing a great awakening. While doubting the possibility of maintaining a free-trade system he is opposed to the introduction of protection at present, lest by reducing the force of competition it should favor adhesion to old methods. German industrial competition he regards as more dangerous to Great Britain than American. The great danger of the future is the declining national vitality, the decline in the birth-rate, a fatal legacy from the Gospel of Ease, which appears in both Great Britain and the United States. To this problem he promises to return, and for that new book all thoughtful men will look with interest.

HENRY W. MACROSTY.

LONDON.

Corporations : A Study of the Origin and Development of Great Business Combinations and of Their Relation to the Authority of the State. By JOHN P. DAVIS. New York, G. P. Putnam's Sons, 1905.—Two volumes: ix, 318 pp.; 295 pp.

Special interest attaches to the volumes under review because of the relation they were intended to bear to a larger work, the completion of which was prevented by the author's untimely death. These volumes were to serve as an historical introduction to a comprehensive treatise on the modern corporation question. Started as a single chapter of the larger work, they grew to their present proportions and were prepared for separate publication before ill-health interrupted the author's labors. They thus have the finish and unity of an independent work, but lack that vital relation to present-day problems that they would have gained had the author lived to complete his undertaking.

The work is divided into fifteen chapters, of which two treat of the importance and nature of corporations; six describe the principal types of corporate organization in mediæval Europe, *i. e.* ecclesiastical corporations, municipalities, gilds and educational and eleemosynary corporations; five deal with the corporations that were prominent in England from the sixteenth to the nineteenth century, *i. e.* regulated companies, regulated exclusive companies, joint-stock companies and colonial companies; and two conclude with discussions of the "Legal View of Corporations" and "Modern Corporations."

The historical chapters are valuable, not so much because they add to our knowledge of the institutions discussed as because they present a comparative view of forms of corporate organization that are not usually thought of together. Thus economists will find little that is unfamiliar in the chapters on the gilds and the regulated companies, but they cannot fail to gain a clearer notion of the importance of these corporations by comparing them with others of the same periods of which, as economic historians, they have perhaps known little. In the same way the student of politics will gain fresh insight into the municipalities of the Middle Ages and the English colonial companies of later times by having their peculiarities compared with those of contemporary economic corporations. As this was the end which the author had chiefly in view he may be excused for making it his task "to correlate and systematize the existing body of facts, taken for the most part from secondary sources, rather than to discover new facts," and for yielding but rarely "to the temptation to indulge in research"—much as the latter is needed in some parts of this field. He appears

to have used the sources with discrimination and his own comments on mooted questions are nearly always helpful.

The bearing which these facts in reference to the corporations of the past have on our present-day corporation problem is indicated somewhat vaguely in the last chapter. The historic corporations described were created to accomplish purposes which for one reason or another the state did not feel able to accomplish directly for itself. "The great fact" made clear by their history "is that the state has wholly or partially absorbed their powers." Thus they served as the advance agents of expanding government to be recalled and absorbed by the government as soon as it felt itself strong enough to undertake what it had temporarily delegated to them. The situation which confronts the United States at the beginning of the twentieth century as regards corporations, the author explains as the joint result of the industrial changes which have made associated activity synonymous with business efficiency and that distrust of state enterprise which Adam Smith helped to impress on nineteenth century thought. Associated activity, prevented by the typical American's distrust of government from taking the form of state action, has inevitably assumed the corporate form to an extent never before approached in the world's history. Corporations have grown and multiplied until they overshadow the state itself and already a conflict has begun between the parent state and the corporations, her unruly offspring. "The result can hardly fail to be the same [as in the case of earlier corporations]—an eventual disintegration of corporations, an absorption of their political elements by the state and the relegation of the remaining elements to the individual." Thus by a purely historical argument the author appears to be brought to a conclusion that many others have reached by diverse paths, that is that we are on the threshold of an era which will witness a great extension of the functions of government, on the one hand, and such a perfection of the governmental machinery for protecting the liberty of the individual, on the other, as will greatly lessen the advantages for business purposes of the corporate form of organization.

Space will permit no more than a statement of this, the principal thesis of the author. The evidence which is given in these volumes of his ability successfully to defend it must cause all students to echo the opinion expressed by Professor J. Allen Smith in his introductory note, that

it must be regarded as a distinct loss to the literature of political science that a writer so well equipped to deal with the modern corporation problem

and so keenly alive to the significance of the present-day tendency toward the corporate form of organization did not live to complete the work which he had planned.

HENRY R. SEAGER.

Zur Politik des deutschen Finanz-, Verkehrs- und Verwaltungswesens. Reden und Aufsätze. Von GUSTAV COHN. Stuttgart, Ferdinand Enke, 1905. 482 pp.

The three-fold division indicated by the title of Professor Cohn's recently published volume of addresses and essays hardly does justice to the breadth of the discussions contained therein. It is presumptuous, doubtless, for a reviewer to begin by re-arranging, even in part, the subject matter of the book under consideration, but in the present case an excuse may perhaps be found in the highly general content of the term *Verwaltungswesen*, especially when used by one whose most intimate familiarity is with the paternalistic system of Germany. From an American point of view, then, Professor Cohn's first four essays may be said to deal with questions of public finance—imperial, state and local. His fifth and seventh papers, on the "Future of Street Railways," and on "Reaction in the Transportation System" respectively, belong properly under the second heading of his title. The remaining essays fall into two classes. Of these the first may be said to deal with economic theory—in itself a term as vague as our author's *Verwaltungswesen*—and to include his discussions of "Ethics and Reaction in Economics" (vi) and "Two Centuries of Cameral Science" (x). The remaining division, which may be described as more or less pedagogical in character, is devoted to papers on "Bureaucracy and Political Science: Considerations on the Scientific Preparation for the higher Prussian Official Service" (viii), "Considerations on the [proposed] Union of Academic Chairs of Political Science with the Juristic Faculties" (ix), and on "The Freedom of Political Science" (xi).

Although he finds much to criticize, much to suggest from the experience of foreign nations, Professor Cohn's attitude on German imperial and Prussian finances is in general optimistic. With regard to *Militarismus* particularly he may be described as a "stalwart." Technical progress increases the burden of armament, he admits, but at the same time it increases economic efficiency and national wealth. Military expenditures, even at the cost of rapidly growing national debts, are not to be condemned as unproductive and contrasted on this ground with sums laid out by the state for the purchase of profitable undertakings, as *e. g.* railroads.

For only armed peace can assure the safety and growth of a nation's economic life, and these ends are to be obtained at no cheaper price [than the cost of armament]. . . . The state possesses not only a material capital, the debt incurred for which is repaid by its productivity; but also an immaterial capital in the security, the peace of the empire, which is bought at the cost of debts incurred for the defence of the country [p. 46.]

Our author's comment on disarmament follows the same lines. "For nations bristling with weapons to stand opposed to each other, and at the same time to enter upon an agreement to reduce the extent of their armament is in itself as absurd as a race between riders who enter upon an agreement to limit speed" (p. 32, n.) A pretty illustration, doubtless, but one that will hardly bear inspection. All fair races are subject to definite, and often quite extensive, agreements as regards length, number and character of entries, etc. How would Professor John dispose of the handicap arrangements so frequently employed? But turning from the illustration to the real point at issue, what our author fails to see is that there is a greater absurdity at the end of his own argument than that which confronts the advocates of disarmament. The tremendous burdens of militancy and the probable destructiveness of modern warfare between great nations have certainly been pointed out with sufficient detail and statistical backing to demonstrate the absurdity of the unrestricted competition along military lines that our author advocates, or at least seeks to justify. Moreover one looks in vain in Professor John's book for a discussion—which his argument naturally suggests but which he would find it very awkward to undertake—of the rate of increase of military expenditure as compared with the rate of increase of national wealth.

With the above exception, however, one finds comparatively little to criticise in the essays devoted to financial questions. Particularly interesting is Professor John's opinion that the empire, in sharp contrast with Prussia since 1870, has as yet produced no really great financial legislation. The jealousy of the states, the ease of contracting debts, the absence of the two-party system and the general unwillingness to pay taxes are assigned in explanation. Our own federal history, it will be recalled, began in quite the opposite way, but then it was fiscal necessity rather than *Blut und Eisen* that brought about the formation of the American Union. In this connection may be noted a rather surprising error into which Professor John falls with regard to the finances of the United States. Discussing the productivity of indirect, and particularly of customs taxes, he writes: "Year in and year out

the federal revenues yield surpluses in excess of need, which have proved the traditional embarrassment of the federal secretary of the treasury" (p. 17). As a matter of fact the real embarrassment from this source has been not from continual surpluses but rather from the everlasting see-saw of surplus and deficit.

A very suggestive part of Professor Cohn's essay on "Taxes and Tax Reforms in the Empire and Prussia" (ii) is devoted to a discussion of the important part played in Prussian finances by the large profits obtained from the state railroads. There is a fly in the ointment, however: vigorous demands are constantly being made by many powerful interests for reduced rates. If these demands are granted a deficit of alarming proportions will immediately ensue, and heavier taxes must be imposed, probably on incomes, property and inheritances. To Professor Cohn this prospect is far from pleasing, particularly as he believes that it would result in driving thousands and hundreds of thousands of middle class voters into the ranks of the Social Democracy.

The constant demand for lowered rates is noted as threatening the policy of municipal ownership which Professor Cohn advocates in his essay on "The Future of Street Railways" (v). American readers will find his discussion of this subject chiefly of interest because of the materials it presents regarding transportation conditions in German cities, and particularly Berlin. The writer's argument, based as it is principally upon the rather doctrinaire ground of an "inner necessity" which is bringing about municipalization, is of less significance.

In his essay on "Ethics and Reaction in Economics" (vi), perhaps the most significant in the volume, Professor Cohn takes up Werner Sombart's famous accusation that German "ethical" economists are in reality reactionaries. German poor laws, factory legislation, laws on school attendance and on stock and produce exchanges are discussed in considerable detail as examples of ethical movements favored by economists which were not reactionary in character. The department store tax, however, which was opposed by economists, is cited as truly reactionary. As for the real reactionary forces in German politics, they are cited here and elsewhere by our author without any mincing of words.

Throughout all his earlier essays Professor John finds frequent occasion to praise the efficiency and honesty of the administrative service of his country. Of course the United States is made to do service as the horrible example which brightens all the more the halo of the *heilige Beamtenstum*. It is with something of a shock, therefore, that the reader learns in the essay devoted to "Bureaucracy and Political Sci-

ence" (viii) that in Prussian universities the law courses are "snaps," the examinations "cinches" and the law students altogether no better than they should be. Nor does Professor John allow himself to be comforted by the flippant story to the effect that "der selige Stahl habe sich gerühmt er sei als Student viel fauler gewesen als die Studenten die bei ihm hörten." Sweeping reforms are demanded to correct the abuses complained of, including a proposal for the more thorough study of the political sciences by prospective administrative officials. The essay on "The Freedom of Political Science" (xi) takes for its text the Ross case at Leland Stanford Junior University, and discusses frankly the various selfish interests, principally capitalistic and agrarian, that seek to derive political advantage from the teachings of German universities. Throughout the essays one notes with pleasure the high ideals regarding his profession that have inspired all the work of Professor John.

ROBERT J. BROOKS.

SWARTHMORE COLLEGE.

A Treatise on the Law of Citizenship. By JOHN S. WISE.
Northport, the Edward Thompson Company, 1906.—vii, 340 pp.

This book was prepared, Mr. Wise tells us, at the solicitation of the publishers, though in obedience to a long-cherished wish "to see the discussion of the origin, nature and obligations of American citizenship, state and national, reduced to compendious form in one volume." Unlike Mr. Frederick Van Dyne's recent work on citizenship, which was reviewed in the POLITICAL SCIENCE QUARTERLY for June, 1904, the present treatise deals with state as well as federal citizenship, and also discusses the duties, obligations, rights, privileges and immunities of American citizens. In this respect it supplements Mr. Van Dyne's treatise, and in consequence is likely to prove a book of wider popular interest. While Mr. Van Dyne confined himself strictly to the legal aspect of citizenship, and federal citizenship at that, Mr. Wise writes of almost every phase of the subject, and even of such topics as suffrage, due process of law, taxation, treason, patriotism, police power and other matters which have at most only an indirect bearing upon citizenship. Mr. Wise's treatise is based almost entirely on the statutes and the decisions of the courts. He has made no use of treaty stipulations, diplomatic correspondence, rulings of the Department of State or decisions of arbitration commissions, and consequently his work fails to contain a large body of the law of citizenship, the extent and importance of which may be easily gathered from an examination of Mr. Van

Dyne's book. This is a most serious defect and will prevent Mr. Wise's work from being ranked as one of the authoritative legal treatises. He does not seem to have examined the excellent works of Van Dyne and Howard or the less valuable ones of Morse and Webster, from all of which he could have gained useful information both as to the law of citizenship and methods of treatment.

Mr. Wise's treatment of the general nature of citizenship does not measure up to the standard attained in other parts of his volume. He has nothing to say of the important distinction between the *jus soli*, which may be called the common law of England and the United States on the subject of citizenship, and the *jus sanguinis*, which is, for the most part, the law of continental Europe, and which has been introduced by statute into the jurisprudence of the United States for determining the status of children born abroad to American parents. Of the confusion arising out of the conflicts between the two theories and the rulings of the Department of State on the resulting problems as they have been presented, Mr. Wise has nothing to say. In treating of the fourteenth amendment it would have been well to discuss the meaning of the important phrase, "subject to the jurisdiction thereof," pointing out the excluded classes. The author refers to the decision of the Supreme Court in the Slaughter House cases as being the first interpretation of the meaning of the above-mentioned phrase, but says nothing about Justice Miller's dictum that children born in the United States of parents who are subjects of foreign powers are excluded under this provision from becoming citizens—an interpretation which was subsequently rejected by the court in the Wong Kim Ark case. He might also have pointed out that the definition of citizenship contained in the fourteenth amendment does not cover at least two classes of persons and that consequently it was necessary to supplement the constitutional definition by statute.

Mr. Wise's treatment of citizenship in the dependencies is full and interesting but contains a few omissions and inaccuracies. On page 34 he refers to the Rasmussen case, decided April 10, 1905, as "defining the status of Alaskan citizenship." The point actually decided in that case was that Alaska had, as a result of treaty stipulations and acts of Congress, been "incorporated" into the United States and that consequently the jury clauses of the constitution were applicable thereto. A great deal was said in the opinion concerning what constitutes "organization" and "incorporation" but nothing about citizenship. If this decision may be interpreted as establishing the law of citizenship in Alaska the same might be said as to the Philippines of the decision

in the case of Dorr and O'Brien rendered in May, 1904, denying the applicability of the jury clauses in those possessions—a case to which Mr. Wise makes no reference. On page 44 he commits the error of saying that "all the civil rights guaranteed by the constitution" have been extended to the Philippines. A careful reading of the act of July 1, 1902, for the temporary government of the Philippines, a measure which re-enacted the president's instructions to the Philippine commissioners in April, 1900, will show that the constitutional guarantees relating to trial by jury, indictment by grand jury and several other fundamental matters were intentionally omitted (32 Stat. at Large, p. 691, sec. 5). Finally, Mr. Wise devotes several pages to the subject of Porto Rican citizenship without mentioning the principle involved in the decision of the Supreme Court in the Gonzales case, rendered in May, 1904, which held that Porto Ricans are not aliens to the United States. It would be interesting to have Mr. Wise's opinion as a constitutional lawyer on the question whether a person who is subject to the jurisdiction of the United States and who is not an alien, because he owes allegiance thereto, can be anything else than a citizen.

The author's discussion of the mode of acquisition of citizenship by naturalization reviews many decisions regarding the cases of European applicants for American citizenship, but contains no references to the decisions concerning Mexicans, Japanese, Burmese and Hawaiians or to polygamists and anarchists of whatever race, although the books are full of cases involving the right of these classes of persons to become citizens under our laws. In his discussion of Indian citizenship Mr. Wise seems to assume that the allotment act affords the only avenue by which Indians may become citizens, thus overlooking the act of 1890 (26 Stat. at Large) which extended the naturalization laws to Indians residing in the Indian Territory. Nothing is said of naturalization by special act, by admission of new states or of the attitude of foreign governments toward their subjects who have become naturalized American citizens. The statement on page 269 that an alien may not vote is an error. In at least twelve states at the present time aliens who have declared their intention of becoming citizens are eligible as voters. To the list of privileges allowed aliens (p. 269) should be added the privilege of participating equally with citizens in the benefits of the homestead laws.

Mr. Wise's treatment of the subject of acquisition of citizenship by birth should certainly contain an analysis of the important act of 1855 which regulates the status of children born abroad of American parents as well as the practices of our government with regard to the status of

children born in the United States of parents who are subjects of states in which the *jus sanguinis* prevails. The important subject of expatriation is disposed of lightly. No attempt is made to state the rules of our government for determining what constitutes expatriation, as those rules have been worked out in the many cases that have come before the Department of State.

Notwithstanding all that has been said above in criticism of Mr. Wise's book as a treatise on the law of citizenship, it is a useful and interesting work. To the idea of state citizenship he makes a distinct contribution and his discussion of civil rights under the fourteenth and fifteenth amendments contains many original and valuable suggestions.

JAMES WILFORD GARNER.

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The Law of Interstate Commerce and its Federal Regulation.

By FREDERICK N. JUDSON. Chicago, T. H. Flood & Co., 1905.—xix, 509 pp.

This volume is the natural outgrowth of a tendency to prolific authorship. The "confessed failure of the system" of taxation in the author's state prompted, in 1900, his *Taxation in Missouri*. This was followed, in 1903, by his more elaborate *Power of Taxation*, of which about one-fifth was devoted to topics discussed in the present work. The increasing interest in the problems of federal control of interstate activities has readily justified the fresh treatment of those topics, and has furnished the opportunity for elaborating such material into an entire volume. This volume, as would any new work on such a subject, will arouse some passing interest, although it is doubtful whether there is much to distinguish it essentially from the mass of digest-commentaries. With some well directed effort it might have been made a permanent contribution to the literature of the subject. The field was practically an open one. Only a single volume on the topic had been written, and since that appeared, in 1898, the materials available have naturally multiplied. It seems doubtful, however, whether the author has had ample opportunity to examine and avail himself of all those materials. Occasionally his discussion of a topic seems to add nothing to the facts or theories of a decade ago. To be sure, he quotes the latest words of the chief executive and the last report of the commissioner of corporations, and he cites or quotes the war secretary, to little scholastic purpose, a score of times; but the reviewer's apprehension that the citations, which are an essential index of value,

do not always bring one down to date is confirmed in some instances by close scrutiny ; and if the examination of authorities was conducted in a manner at all approaching that in which the proof was read, one would certainly hesitate to put an unquestioning reliance upon the book.

Disregarding the fifth of the volume which is given up to lists and index, practically one-half of the text is devoted to a reprint of the Interstate Commerce Act, most of the sections of the text being followed by short digests of decisions interspersed with the running comment of the author. The arrangement is not especially useful for the working lawyer. He may, at times, well be in doubt as to how much is decision, how much dictum, and how much editorial opinion ; nor is there anything to indicate whether a particular brief statement is the only, or the controlling, point of a case. The form of this section will not appeal to lawyers ; and to general readers it will seem like an aimless ramble. There appears to be little subordination of material to the author ; organization of material and its interpretation seem of less importance than getting everything into the book. For instance, section 208 is merely a series of citations, with short statements, to illustrate "undue preference in classification." It is thus tersely pointed out that "Hostetter's stomach bitters were held not properly classified in the first class with other liquids similar in character," that "toilet soap was held properly classed higher than laundry soap," that "celery was properly classified with vegetables rather than with fruits," that "cow-peas were held properly classed with grain, and not with fertilizers," while in one case cited it is said merely that "the principles of classification were discussed and applied in the case of surgical chairs." Such a solid string of citations as that on page 178 hardly benefits the body of a treatise. Occasionally, sentences seem to be constructed rather unconventionally, as on page 217 ; while in one instance the author's haste has driven him to commend, by incorporation, some well chosen words originally produced by Commissioner Prouty. If this portion of the work could be properly edited—if the original work were separated from the compiled portion and the purely illustrative material and citations put into foot-notes that would not break the continuity of any real discussion—the appearance of the pages might be considerably altered, but the value of the book could be much enhanced. The same suggestion, in a less degree, would apply to the distinctly original portion of the volume, consisting of some one hundred and forty pages. This essay, which precedes the annotation of the statute, discusses in a fairly readable way the general topics presented, such as the concurrent and exclusive powers under the constitution, the federal

regulation of interstate commerce and the federal control of state regulation. The same general field had already been thoroughly covered by Prentice and Egan in their *Commerce Clause*, and it is doubtful if the later work will in any degree supersede the older.

While the author is quite punctilious in indicating the sources of his information and theories, it is somewhat noteworthy that at no point is any reference made to the existence of the earlier work. This would not be matter of comment but for the fact that the present work certainly owes something to an introduction to the materials furnished by its predecessor. It may readily be granted that this obligation may be no more than one editor should feel to an earlier worker by whom he has, perhaps unconsciously to himself, been somewhat guided or assisted; yet, in the absence of any acknowledgment of such obligation, one cannot help noticing the close similarity between the two books: for instance, in their mention of *Gibbons v. Ogden* (Prentice, p. 15; Judson, p. 9) and of *Willson v. Blackbird Creek Marsh Co.* (Prentice, p. 21; Judson, p. 32); in their characterization of "the original package" rule (Prentice, p. 70; Judson, p. 26); and in the choice by the later writer of the year 1840 (Judson, p. 4, note 1; Prentice, p. 14).

Mr. Judson's statement (p. 24) that the original package rule was "first declared" in *Brown v. Maryland* would hardly have been allowed to stand unchanged if the writer had examined Freund's *Police Power*, sec. 81. For the third proposition in the second paragraph on page 48 the author cites only four cases, all of which were cited in the earlier work. He apparently ignores the later decisions, as he may be entitled to do; but certainly some allusion should have been made to the unique decision of *Jannin v. The State*, 42 Texas Crim. Rep., 631. These comments should not, however, detract from the fact that the volume contains much which is interesting, and also much, such as the tables of decisions of the Interstate Commerce Commission, which is the result of well directed industry.

The volume contains a reprint of several pertinent statutes, all readily available for both lawyer and student. It includes the rules of procedure of the Commission, also easily available; and there are furnished a few useful forms, but with no mention of the fact that they are merely reprinted from the Tenth Annual Report of the Commission.

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NEW YORK CITY.

BOOK NOTES

Among the interesting institutions recently inaugurated in Belgium under the name *Instituts Solvay* the Institute of Sociology, presided over by M. Emile Maxweiler takes a prominent place. The literary output of this institute comprises three classes of productions—(1) *Notes and Memoirs*, being occasional sociological studies of an original character, as well as scientific criticisms; (2) *Social Studies* dealing with the social sciences in general; and (3) the so-called *Actualités Sociales* or small volumes designed to popularize the subject. Of this last series nine numbers, varying in size from 90 to 300 pages have appeared in 1904 and 1905. The series is inaugurated by a study entitled *Principes d'orientation sociale* by M. Solvay, the founder of the Institute, and among the other interesting studies are those on the "Productivity of the Human Machine;" "Fatigue from a Military Point of View;" "Insurance and Poor relief from a Medical Point of View;" "Corporate Abuses" and "Tenement-House Labor." The studies are not confined to Belgium, as in the case of the "Belgian Coal Industry" but treat of other countries, as the "Protection Movement in England," and "the Struggle against Degeneration in Great Britain."

M. Jean Jaurès's *Studies in Socialism* (London, the Independent Labor Party, 1906) is a conspicuously able defense of that wing of the Socialist party which seeks through gradual reforms, rather than through revolution, to compass the reorganization of industrial society. One of the greatest merits of this book is its freedom from the intolerant spirit which even the greatest socialistic writers display toward fellow Socialists who disagree with them upon matters of practical policy. Under the leadership of men like Jaurès the Socialist party would quickly cease to be an object of dread even for those who most abhor its principles. M. Jaurès insists vigorously upon the necessity of winning over to socialism the vast majority of the citizens of the state before any endeavor should be made to introduce the socialistic scheme in its entirety. Even a respectable minority devoted to existing institutions would, in his opinion, prove an insuperable obstacle in the way of a socialistic state. This view he fortifies with arguments drawn from history and from common sense which it would be extremely difficult for the revolutionary socialist to refute.

In the fifth edition of Professor Werner Sombart's *Socialismus und*

soziale Bewegung (Fischer, Jena) the facts have been brought down to the beginning of 1906 and the whole work has been remodeled. So scrupulously fair has the author been that he is often mistaken for a Socialist, whereas a careful scrutiny of the book would disclose the fact that the contrary is the case. In its new form the work has all the charm of the old one, which has been translated into all the important modern languages, and which has in Germany reached a sale of over 30,000 copies.

In a little volume entitled *Christian Socialism in England* (London, Swan Sonnenschein & Co., 1903; viii, 208 pp.) Dr. Arthur V. Woodworth gives a scholarly though not very entertaining account of the history of the Christian Socialist movement. The main emphasis of the book is placed upon the religious and ethical aspects of the movement; the discussion of the social aspect is somewhat hazy, as was perhaps inevitable, since the Christian Socialists themselves appear to have had no very clear ideas as to the social order which they hoped would in time replace the competitive society in which they lived.

One of the most picturesque figures in the early anarchist movement in the United States was Josiah Warren. An interesting light is thrown on his struggles by William Bailie in the little biography entitled *Josiah Warren, the First American Anarchist. A Sociological Study*. (Boston: Small, Maynard & Co.) The book does not purport to be a scientific analysis of his doctrines, for which the author is evidently unqualified. It is worthy of note to find the statement that "Warren's theories of value and the reward of labor were not put forth as an explanation of existing economic phenomena, but rather as the principles which, in a perfectly free state of society, would govern economic relations." The author of *Cost, the Limit of Price*, must hence be regarded as an amiable utopian.

One of the latest volumes in the Selections and Documents in Economics edited by Professor Ripley is *Selected Readings in Public Finance*, by Charles J. Bullock. (Ginn & Co.) The editor of this compilation provides a chapter on the literature of public finance and also furnishes the connecting links between extracts from widely varying sources. The chief criticism to be passed upon what is in other respects a most useful work is the comparatively slight attention paid to specifically American problems. The treatment of the general property tax and of the corporation tax—which form the central points in the American revenue systems—is wholly inadequate, and almost no attention is paid to recent developments. In a future edition it would be wise to supplement the Massachusetts Report by those of some of

the other states, and of organizations like the New York Tax Reform Association.

Bunshiro-Hattori, sometime Fellow in Social Science at Princeton University has published a study on *Local Finance in Japan in Relation to Imperial Finance*. The monograph, which covers a field that is rather new to occidental students, is only a sketch, based on rather scanty material, and is of interest chiefly as illustrating the general system. The English is rather better than is usually found in Japanese doctoral dissertations, but is still far from smooth; and there are entirely too many misprints, as "compromises" for "comprises" (p. 4), "Row-Fugo" several times for "Row-Fogo" (p. 61), and repetitions of entire lines as on p. 24 and elsewhere.

Mr. Percy Kinnaird's *The Legal Tender Problem* (Chicago, Ainsworth & Co., 1904; 338 pp.) is the highly imaginative and unreliable product of a Nashville lawyer. Aside from his general disregard for facts, what seems most characteristic of the author is his animosity toward New England and "the East" generally and his apparent belief that all human greed and cunning find their embodiment in the Republican party. His central thesis is that government issue of full legal tender paper is a panacea for most national ills and that failure to adopt such a money system is a sufficient explanation of the decay of states.

The merit of the little volume published anonymously under the title, *A Corner in Gold and Our Money Laws* (London, P. S. King & Son, 1904), lies in its plea for greater elasticity in the paper-money system of Great Britain; but the exposition constantly betrays superficial acquaintance with the general theory of money. Nearly half of the volume (pp. 113-200) is an appendix giving in full two speeches of Sir Robert Peel (May 6 and May 20, 1844) on the subjects of the renewal of the bank charter and the state of the law respecting currency and banking.

H. Stanley Jevons's *Essays on Economics* (London, Macmillan & Co., 1905; xi, 280 pp.) is in form an elementary text-book in economic theory. As such it covers only a limited portion of the field. Aside from the introduction, the book contains only six chapters: "Pleasure and Pain;" "Utility;" "Labor;" "Exchange and Capital;" "Rent" and "Production." In his general view of economic method Mr. Jevons follows closely the ideas of his father, the late W. Stanley Jevons; hence no one need be surprised that the pseudo-psychology of the hedonic school is again put forward as a satisfactory basis for economic reasoning. "That ambiguous and dangerous term, value," is

avoided altogether; and "cost" is limited to the meaning of money cost. However little one may be disposed to accept many of the author's views, one must recognize in this little book a quality of vigorous thought and of definite expression which is unfortunately rare in much of current economic writing.

In view of the remarkable increase in the number of economics text books of American origin, it is somewhat surprising that a publisher should find it profitable to place on the market a translation of a foreign text-book, even though the work is one possessing so many admirable qualities as Professor Emile Levasseur's *Elements of Political Economy* (translated by Theodore Marburg: Macmillan, 1905). The translation is excellent, and preserves much of the literary quality of the original. As an introductory work, this book has the merit of extreme lucidity. In spite of additions and changes made by the translator, it is, however, essentially a foreign work. The illustrative material is almost all drawn from French economic life, and the problems discussed are selected with regard to the needs of French students. Thus a considerable space is devoted to the trade guilds of Europe, but none to trusts in America. The treatment of theoretical problems, moreover, is somewhat obsolete. It is therefore doubtful whether the book will prove available for use in American colleges.

Mr. Frank Julian Warne's *Coal Mine Workers* (New York: Longmans, 1905; x, 252 pp.) is a sympathetic account of the organization, methods and aims of the United Mine Workers. Events which have occurred since the publication of Mr. Warne's book corroborate his view that the mine-workers' union is a conservative organization, and that it is fortunate in having a leader of unusual sagacity. The book is written in a scientific spirit, if one excepts a tendency at times to condone violence on the part of the union against non-union men. Since the union is avowedly an open one, making no discriminations on account of race or color, and charging very moderate fees and dues, the author is disposed to join with the unionists in regarding as enemies of mankind those who obstinately refuse to become members.

In number 5 of the Social Science Series of the Colorado College Studies Mr. B. M. Rastall discusses *The Cripple Creek Strike of 1893*. The material has been drawn in large part from actual participants and eye witnesses, and as a consequence the external history of the strike is described with fairness and accuracy. But we miss with unimportant exceptions anything more than this mere chronicle of events.

A Comparison: The Brassworkers of Berlin and Birmingham (London: P. S. King and Son, 1905) is a monograph of more than local interest. In it three representatives of Birmingham, a manufacturer, a trade unionist and a philanthropist, give a simple report of the impressions made upon them by a study of the formative influences in the lives of Berlin's brassworkers. It is striking testimony to the changed temper of the erstwhile self-confident, not to say self-satisfied, Briton, that at almost every point the comparison made is favorable to Berlin. Quite as suggestive is the explanation of the superior lot in life of the Berlin brassworker that is offered: more sensible social standards and customs, and better provision by the state for trade education, relief in time of sickness or unemployment and care in old age. The point about the benevolent institutions of Berlin that most impresses these visitors is the sharp distinction made between the self-respecting victims of misfortune and the vicious and vagrant. Their conclusion in reference to the much-criticised system of compulsory insurance is altogether favorable and they go so far as to say: "the idea of compulsion in such cases is perhaps repugnant to the traditions of Englishmen, but it is a matter for thoughtful consideration whether this sort of submission [to law] denotes that the German is ahead or behind the Briton in his attitude towards it." The pamphlet is to be commended as a valuable addition to that still all too small body of literature which attempts to go below a mere surface comparison of the money wages paid in different lands to a study of those factors which contribute to permanent well-being.

An excellent example of the kind of useful work that can be done by local authorities under enlightened suggestion and assistance is the neat and well printed *Records of the Town of Hanover, N. H.*, prepared and issued under the supervision of Professors H. D. Foster and S. B. Fay, of Dartmouth, and Mr. G. M. Bridgman, the town clerk. The volume contains the official proceedings of the town meeting of Hanover from the founding of the town in 1761 to 1818. In such quaint records as are here made easily accessible to all students, both history and political science find the best possible material. Here is the town meeting of actuality—a wholesome antidote to the town meeting of fancy which has figured in—and disfigured—the works of some enthusiastic admirers of what they thought ought to have been our early institutions.

POLITICAL SCIENCE QUARTERLY

THE RUSSIAN PEASANT AND AUTOCRACY

I

YEARS ago one could find occasionally in Russian peasant huts pictures of Louis Napoleon, carefully cut out from a daily newspaper or from a weekly and nailed on the wall, perhaps side by side with a cheap chromo of Alexander II, in whose reign serfdom was abolished. But spread more widely than the pictures of Louis Napoleon was a curious tale, simple in its nature but deep in its meaning. After the allied armies had taken Sebastopol and had won the Crimean campaign, the young Tsar Alexander Nikolaevitch, according to the story, sought peace from Louis Napoleon. And to the young Russian tsar the emperor of the French said: Peace you can have, but on one condition: you must solemnly swear to free your own long-suffering Russian people from serfdom and bitter iniquity.

Naive is this tale; but the popular mind was certainly not far astray in connecting the fall of Sebastopol with the abolition of serfdom. The Crimean campaign made it clear to every cultivated Russian, as well as to the more enlightened elements in and around the winter palace, that the empire was so thoroughly incapacitated by its own institutions, based on serfdom, that Russia must either be reorganized or face the consequences of its misrule. Soon after peace was signed, Alexander II, in March, 1856, addressed the nobility of Moscow, and in this address it was officially intimated for the first time that serfdom must be abolished. "It is better," he said, "to abolish serfdom from

above than wait till it shall abolish itself from below."¹ It was in accordance with this wise prevision that the imperial government officially abolished serfdom on February 19, 1861.

To-day, forty-five years after the emancipation, we still hear throughout the empire the old cry: "Land and liberty." And if it were merely a cry! Cries can be suppressed in Holy Russia. But estates are being pillaged, manors are afire, and the peasantry is becoming an integral part of the nation and is getting ready to answer the bugle-call of the revolution.

There were times when the old governmental wisdom worked well. The recipe was simple: "Russia must be kept frozen, that it may not get putrid."² The peasantry—or, to speak more accurately, the ignorance of the peasantry—was regarded as the corner-stone and foundation of the throne, and especial care was taken that this class should not become "contaminated" by West European culture, in fact by any culture. It remained ignorant. Arrayed in uniform the ignorant peasant was called upon to fight for the Manchurian adventure of Emperor Nikolas II, and he died as ignorant of the ends for which he was dying as he was ignorant of those for which he had lived. Is it not a pathetic comment on the tsar's government that Russian soldiers, as prisoners of war, were taught to read and to write Russian by the Japanese?

Yet the notion is widespread that the Russian autocracy is particularly democratic, for in every imperial manifesto addressed to the peasantry the assurance can be found that the peasants are especially near to the heart of the emperor and that their needs are his special care. And until very recently the vast bulk of the peasant body firmly believed that the tsar was with them, but that the officials and the nobility kept the tsar from exercising his good will and bestowing his bounty upon them.

Is there no truth in this legend? It is a part of Russian popular tradition, and like all folklore it is an interpretation of an historical reality, of a political situation antedating the intro-

¹ Materiali k istorii unichtozhenia krepostnago prava v carstvovanii Aleksandra II (St. Petersburg, 1860), vol. i, p. 214.

² Simkhovitch, "An Interpretation of Autocracy," in *The International Quarterly*, October, 1904, pp. 1-12.

duction of serfdom. Like so many popular sayings it came down from generation to generation, losing connection with the facts that supported it, generalized in oral transmission, sanctified by time, till it was finally viewed by the good-natured and illiterate peasant as a political axiom.

The origin of this legend unquestionably dates back to the period preceding the establishment of autocracy in Russia. It is an interpretation of the actual policy of the Muscovite grand dukes in the sixteenth century, which consisted in ruthless extermination of the feudal aristocracy. Little love was wasted by the peasantry on their feudal lords, and the bloody extermination of these lords by Ivan the Terrible particularly impressed the popular mind. Each and every ruthless deed was covered by the father of Russian autocracy either by a quotation from the scriptures, or by the word "treason" coupled with a melodramatic appeal to the common people. Ivan's picturesque figure was bound to impress itself upon the people's imagination; he became the hero of many a folksong, in which he was treated on the whole with sympathy. That was the origin of the legend.¹

Soon enough the peasantry found that the newly created landlord class, "the men of service," were considerably worse than the old feudal aristocracy. But the legend remained, cherished by the government even more than by the people. In recent times, when the imperial government needed an excuse for its existence, a *raison d'être* of autocracy in Russia, it brought forth this very legend of the peculiar closeness of the tsar to his people as a singular God-given national characteristic of Holy Russia, which could not suffer that an institution so foreign as a parliament should stand between the tsar's heart and his people. And the ignorance of the peasantry remained the foundation of the throne.

In the last two or three years of serfdom the old legend was revived. While many a nobleman was opposed to serfdom, the nobility as a class was naturally enough guided by its class interests, and its attitude toward the abolition of serfdom was as

¹ Miliukov, *Russia and its Crisis*, pp. 353-355.

a whole unfriendly. The peasants coming in daily contact with their masters could not help noticing this fact. Rumors became current throughout the peasant world that the tsar was about to give them "land and freedom"; and for three or more years, while the reform measure was being prepared and elaborated, the abolition act was keenly awaited by every peasant throughout the empire. The day came, and the disappointment was bitter. The peasantry of many a place would have preferred serfdom to the status offered them. The "freedom" so feverishly expected, so fervently prayed for, had to be introduced only too often with the help of the military. In the official *Short History of the activity of the Department of the Interior for the twenty-five years 1855-1880*, we read that in the first two years after the publication of the abolition act, from February 19, 1861, to February 19, 1863, the department of the interior had to suppress more than 1100 agrarian riots. So, for instance, on the estate of Count Apraxine in the province of Kazan, the troops were called upon to bring to submission 5000 peasants, killing 55 and wounding 71. On the estate of M. Volkoff in the province of Pensa, the troops had to deal with 10,000 peasants, killing eight and wounding 26. How many tens of thousands of peasants were flogged and clubbed into "freedom" God alone knows. So, for instance, in M. Volkoff's village, to which we have just referred, 28 men were sent to forced labor in Siberia after receiving from 400 to 700 lashes with *Spitsruten*,¹ 80 men were exiled to Siberia after receiving 200 to 400 lashes with *Spitsruten*, three were sent to a penitentiary, three sentenced to punitive military service, 58 were flogged with rods without any further punishment.*

Ominous indeed was this forcible introduction of "freedom." For years the peasant was sure of the coming of that freedom which the tsar had announced. What was given to him as freedom, the popular mind reasoned, could not possibly be the

¹This punishment was "running the gauntlet," or rather walking it. The offender was led between a double line of men armed with stout sticks and beaten as he passed.

* V. K. Semevski, *Krepostnoie pravo i krestianskaia reforma v proizvedeniakh M. E. Saltikova*, pp. 23, 24.

"true freedom," the tsar's freedom. The true freedom must have been withheld from the people by the nobility and the official class. And again the popular mind was not so far from the truth. True freedom was withheld from the people by the nobility and the officials, but the tsar was the first noble and the first official of his land.

II

The fundamental principles of the great reform act were, first, that the person of the serf was to be freed without compensation, and secondly, that the freed serf was to receive land allotments sufficient to provide for his needs and to allow him to meet his obligations towards the state. For the land allotted to him he was ultimately to pay. The government undertook to pay the former landlord, collecting the amount from the peasant but distributing the payment over a period of forty-nine years. The interests of the state of course required that the peasantry should be put on a sound economic footing. But on the other hand it is to be remembered, that a "state" is not an abstract idea, and that in reality all the agents of the state—*i. e.*, all those who held official positions, central or local, all those who were called upon to draft the abolition law and all those who were afterwards commissioned to carry out the law and put it into practice—belonged to the nobility, the class of serf-owning landlords.

Of course the Russian nobility did not represent one solid, homogeneous, selfish body. There were among them most unselfish individuals, some of whom were men of influence; there were others who, while on the whole favoring their own class, were broadminded enough to have the interests of the state and those of the peasantry at heart too. Such men were favored by the tsar. Many of them had a great deal to do with the work of the emancipation. But the vast bulk of the nobility cared for nothing but its own interests and was striving either to checkmate the reform or so to frame it that the landlord and not the peasant should be benefited by the new law.

The final draft of the abolition law was a compromise between these different tendencies within the higher bureaucracy, and the interests of the nobility were only too well taken care of.

The abolition act itself is too complicated and too technical to be of interest to the American reader.¹ In brief this act and the supplementary laws established the following situation:

The serf of yesterday was not made free, but put in a transitional state. For the first two years the peasants were "to remain in their former obedience to their landlords and fulfil their former obligations without dispute." It should be remembered that within these first two years, when the peasants were to remain in absolute obedience to their landlords, the final arrangements and settlements of land matters between the landlords and the peasantry were to take place.

After these two years the peasants were put into "temporarily obligatory" relations, which were to last so long as the landlords were not paid in full for the land allotments of the peasantry. While the peasants were in this "temporarily obligatory" state, the landlord was to have the right of police, the right to dismiss the elected officers of the peasant community, the right of vetoing all decisions of the peasant meeting, the right of expelling any peasant whom he regarded as a bad influence. All his rights in part or as a whole the landlord could transfer to any other person by giving him a power of attorney.²

The peasant received the permanent use of his homestead and a certain allotment of arable land and pasture, for which he was to pay a certain rent to the landlord. The maximum and minimum size of the land allotment and the rent for the payments were fixed by law, but room was left for voluntary arrangements between peasant and landlord. By arrangements with the peasants the landlord could also grant them one-fourth of the land norm as a gift without any payment on the peasant's part. The payments for the land allotments were largely fixed on the basis of what the peasants paid in the days of serfdom.³ In

¹ For a brief account of the abolition work see Simkovich, "Die Bauernbefreiung in Russland," in Conrad's Handwörterbuch für Staatswissenschaften, 2d ed., vol. II, pp. 399-423.

² Druzhinin, Youridicheskoe polozhenie krestian (St. Petersburg, 1897), p. 59.

³ See Professor Ivanyoukoff, Padenie krepostnago prava (St. Petersburg, 1882), p. 289. Also Simkovich, Die Feldgemeinschaft in Russland (Jena, 1898), pp. 239-246.

addition the following principle was introduced: the smaller the allotment, the higher the rate of payment. It was an application of the marginal theory of value. It was claimed that the peasant could use the first dessiatine of land to greater advantage than the second, that he would exploit the second dessiatine more thoroughly than the third, and so on. Accordingly the payments on the first dessiatines were higher than on the subsequent ones. The result was that the less land the peasant had, *i. e.* the poorer he was, the higher was his rate of payment. The difference was very substantial, varying from 51.5 per cent to 88.1 per cent.¹

It is proper to consider as a part of the abolition act the great bond issue, through which the government paid off the landlords, taking over the peasant indebtedness, in return for which the peasant was to pay a redemption tax for forty-nine years. This and all other taxes were collected by the government from the village commune, the members of which were severally and jointly responsible for the taxes.

Still more than by the law itself was the nobility favored by its enforcement and execution. The peasantry was cheated in all sorts of petty ways with the connivance and help of the local administration, and the allotments were as a rule so arranged as to make the peasantry dependent upon the landlord's estate.

Small wonder therefore that it took military force to make the peasant recognize the newly granted freedom. His landholdings were diminished, his payments if anything increased, and as to his freedom of person, it is hardly fair to blame him for not perceiving it. In the past he could not leave his place without permission of his master; now he could not leave it without the permission of the authorities. He was given land, which was not his own, but which belonged to the village community. He could not say to the authorities: "Keep your land and let me go." Too many would have liked to do that, if they could! The taxes on the land exceeded two, three, four, six and occasionally ten times all it could possibly pro-

¹ Khodski, *Zemlia i zemledelec*, vol. ii, p. 29.

duce. He was under obligation to take the land, and he could leave it only on the condition that he was to pay the taxes. In the past he was subject to personal violence on the part of the landlord, who could flog him if he saw fit. Now he was flogged on the decision of the village court or, without any decision, at pleasure or leisure of any petty police official.

Later, in 1889, Alexander III created a new body of officials, who combined absolute judicial and administrative powers. These were the *zemskie nachalniki*, the rural commanders. They were appointed from the local landlord class without any educational qualifications. These officials had absolute power over the peasantry in their districts. They flogged the peasants for not taking off their hats, for not turning out on the road, for talking loud and in fact for anything they pleased. Mr. Beer, a *zemski nachalnik* himself, published commentaries on the law of 1889 which became the standard guide of his fellow commanders. In these commentaries we read the following recommendation, intended to prevent the occasional chopping of fire wood in the landlords' forests:

Nobody shall leave the village at night without presenting himself personally to the selectman (*selski starosta*) or to one acting in his place. Nobody shall leave the village at night at all, or in the day time for more than twenty-four hours without reporting to the selectman where he is going and for what purpose. For any departure without permission the guilty one shall be punished. Any one who departs at night is to be reported in the morning by the watchmen and sentinels to the selectman, who is to inquire into the matter and punish disobedience, even if it be proven that there was nothing suspicious or improper in the departure.¹

Does such a commentary need any further comment?

When therefore, four years ago, the government organized the great agricultural inquest, with 400 local sub-committees, in the proceedings of which 11,000 men took part, the chief recommendation of these committees was that

in order to be economically active and enterprising, the rural popula-

¹ Beer, Kommentarii k uchrezhdenniam 12 Yulya 1889 g., pp. 69, 70.

tion must secure for itself certain rights, which would guarantee its work against encroachments, and it must also know that it is entitled to defend its rights.¹

III

The defects of the abolition law and the effects of bureaucratic oppression became evident as early as in the sixties of the past century. The official statistics had to acknowledge the sad facts. Commissions and committees to investigate and to deliberate *etc.* were appointed. And while they accomplished nothing of practical benefit to the peasantry, valuable and interesting statistical and other material has been published from time to time by such commissions and other organs of the government.

Basing his work on the reports of the commission for inquiry into the agricultural situation, on the publications of the tax commission and on some other official statistical publications, Professor Y. Janson published in 1877 his remarkable book on peasant land allotments and taxes. This has been universally recognized as a most accurate piece of investigation. We shall therefore quote a few data from it. Professor Janson tells us that wherever an accurate estimate has been made of the productivity of the land allotments, the taxes exceeded the productivity. For instance in the province of Novgorod the peasantry can be divided into four groups, with the following relations of land-tax to land-income:

The former crown peasants	100 per cent.
The former appanage peasants	161 per cent.
The former private peasants	180 per cent.
Peasants in "temporarily obligatory" relations	210 per cent.

In certain districts the tax occasionally amounts to 565 per cent of the land income. According to the calculations of the St. Petersburg zemstvo the relation of the tax and redemption

¹ I take this quotation from Professor Milyukov's excellent book, Russia and its Crisis, 1905. "Instead of that," adds Prof. Milyukov, p. 447, "the peasant is now powerless against the whims of the local authorities; his economic activity is under strict control; his person, his property and his family are dependent upon the arbitrary decisions of the mir; he may at any time be arrested and flogged."

payments to the land income varies from 128 to 150.5 per cent. In the province of Moscow it averages 205 per cent; in Tver, 244 to 252 per cent; in Smolensk, 166 to 220 per cent; in Kostroma, 146 to 240 per cent; in Pskoff, 130 to 213 per cent; in Vladimir, 168 to 276 per cent; in Viatka, 97 to 200 per cent, etc.¹

A tax on land that exceeds the income of the land is an absurdity, one would say. Certainly, but what was actually intended was a modified form of serfdom. The peasant became the serf of the state; the state took from him all the land could possibly produce and, besides, a very large share of what the peasant could gain outside by plying a trade or by hiring himself out. The land tax therefore swallowed the major part of the wages of the peasant as a factory hand, blacksmith, river driver, wood-chopper, farm hand and what not.

The zemstvo statistical bureau of the province of Novgorod gives the following detailed statistical account of the total income of the peasants of that province and of the relation of their income to their taxes. One-third of all the men and two-thirds of all the women of the peasantry have to work on the farm the whole year round and therefore bring in no outside income. The sum total of the outside earnings of the peasantry of the province amounts to 8,855,100 rubles, and is brought in by the following earning groups:

One-third of all male adults (63,700) working out the whole year	3,184.950
One-half of the minors and one-third of the female adults working out the whole year	2,275.850
One-third of the male adults and one-half of the minors working out during the winter	1,228.500
Winter work of the horses	2,165.800
	<hr/>
	8,855,100

The food deficit which was occasioned by the insufficiency of the land allotments, and which had to be covered from the outside income, amounted to over three million rubles. Taxes

¹ Yanson, *Opyt statisticheskago izsledovaniia o krestianskikh nadelakh i platezakh* (2d ed, St. Petersburg, 1881), pp. 35, 36.

amounted to 3,278,136 rubles. There remains about two and a-half millions, *i. e.* about 12 rubles 65 kopeks in each peasant household, out of which amount all the necessities of life, such as salt, clothing, shoes, *etc.*, as well as the repairs and purchase of agricultural implements, must be covered.

The situation in many provinces was much worse and in few better.¹ On the whole it was such that Professor Yanson comes to the conclusion that the peasantry was economically better off during the period of serfdom.²

If that was the situation created by the reform, and if the taxes were actually collected, *i. e.* clubbed out of the peasant, then it was obvious that the peasant class in Russia was doomed. If the peasant's horse and cow were to be sold for tax arrears, then it was obvious that the peasant's situation was bound to become more desperate from year to year. Yet it is doubtful if, in the first decade after the abolition act, anybody thought that the peasantry would be brought by the tsar's government to the point of physical deterioration, of perpetual famine, of slow death by starvation. That, however, is precisely what his majesty's government has accomplished.

On November 16, 1901, a new agricultural investigating commission was appointed by the tsar. This commission published four volumes of statistical data relating to the welfare of the peasantry and allied subjects. Russian official data generally paint the situation in a more rosy light than the facts warrant. But let us give them in this case the benefit of the doubt and assume that the situation is not worse than that acknowledged by the governmental commission. One of the chapters of the commission's report opens as follows:

The quantity of farm stock is one of the chief indices of the welfare of the population in agricultural countries. Without farm stock agriculture is impossible even in countries where agricultural machines are generally used; and this is still more true in our fatherland where agricultural machinery has not yet found such general application. The farm stock statistics are therefore very significant for the explanation of the economic status of our peasantry. The quantity of such

¹ *Ibid.*, pp. 38-40.

² *Ibid.*, pp. 73-75.

stock indicates the state of agriculture as well as the welfare of the agricultural population. Besides its service as working power, it counteracts the natural exhaustion of the soil, it serves as material for food, for clothing, for harness, etc., and thus becomes of cumulative importance in the whole national economy.¹

The accompanying tables show us how well the Russian peasantry is supplied with farm stock.

TABLE I^a

REGIONS	YEARS	FARM STOCK			FARM HORSES	
		PER 1000 DESIATINES FARM LAND	PER 1000 SOULS OF POPULATION	PER 1000 FARMS	PER 1000 SOULS OF POPULATION	PER 1000 FARMS
1. Northern	1870	344	1,051	6,170	197	1,158
	1880	357	965	5,669	181	1,062
	1890	341	950	5,589	199	1,169
2. North-Eastern . . .	1900	306	925	5,407	145	846
	1870	607	1,364	8,371	262	1,608
	1880	560	1,182	7,213	244	1,488
	1890	456	1,043	6,408	223	1,372
	1900	492	1,144	6,902	189	1,145

¹ Materiali visochaishe uchrezhdennoi 16 Noiabria 1901 g. komissii, part iii (St. Petersburg, 1903), p. 209.

^a *Ibid.* part i, pp. 210, 221. In giving the data I follow the governmental publication and subdivide Russia into "regions." It may perhaps be well to point out which provinces are included in each region:

Northern provinces: Arkhangelsk, Oloneck, Vologda, St. Petersburg, Novgorod, Pskoff.

North-Eastern provinces: Viatka, Perm.

Eastern provinces: Ufa, Orenburg, Samara.

South-Eastern provinces: Astrakhan, Territory of the Don Cossacks.

Central Volga provinces: Nishni-Novgorod, Kazan, Simbirsk.

Central agricultural provinces:

(a) *The Eastern group*: Penza, Saratoff, Tamboff, Voronesh, Kharkoff.

(b) *The Western group*: Kursk, Orel, Tula, Ryazan.

Central industrial provinces: Vladimir, Kostroma, Yaroslavl, Tver, Moscow, Kaluga, Smolensk.

Baltic provinces: Curland, Livonia, Estonia.

North-Western provinces: Vitebsk, Mohilev, Minsk, Vilno, Kovno, Grodno.

South-Western provinces: Volhynia, Kieff, Podolia.

Ruthenian provinces: Poltava, Tehernigov.

Bessarabian provinces: Yekaterinoslav, Tauris, Kherson, Bessarabia.

TABLE I—Continued.

REGIONS	YEARS	FARM STOCK			FARM HORSE	
		PER 1000 DESERVING FARM LAND	PER 1000 SOULS OF POPULATION	PER 1000 FARMS	PER 1000 SOULS OF POPULATION	PER 1000 FARMS
3. Eastern	1870	295	1,829	11,260	376	2,315
	1880	294	1,551	9,558	349	2,153
	1890	299	1,316	8,103	269	1,657
	1900	357	1,357	8,360	251	1,549
4. South-Eastern . . .	1870	701	4,018	22,660	219	1,235
	1880	692	3,172	17,815	108	945
	1890	686	2,697	15,143	151	852
	1900	635	2,223	12,396	132	738
5. Central Volga . . .	1870	666	1,134	6,761	213	1,270
	1880	630	932	5,563	177	1,055
	1890	645	889	5,325	154	977
	1900	581	748	4,415	134	796
(a) Central Agricultural	1870	972	1,638	11,221	236	1,616
	1880	841	1,210	8,289	179	1,228
	1890	892	1,182	8,105	183	1,259
	1900	825	1,040	7,011	137	923
	(b) Western group .	872	1,147	7,828	224	1,526
		919	1,045	7,129	192	1,313
		895	948	6,409	193	1,314
		848	834	5,680	124	843
7. Central Industrial . .	1870	473	909	5,386	195	1,156
	1880	489	873	5,176	177	1,051
	1890	469	823	4,887	179	1,062
	1900	487	806	4,782	139	825
8. Baltic	1870	1,863	1,394	10,586	140	1,128
	1880	1,155	1,182	8,983	153	1,160
	1890	980	1,059	8,011	151	1,148
	1900	1,001	1,154	8,796	102	774
9. North-Western . . .	1870	798	1,469	11,710	190	1,518
	1880	941	1,369	10,975	195	1,563
	1890	912	1,220	9,690	180	1,433
	1900	859	1,105	8,788	126	1,000
10. South-Western . . .	1870	1,035	1,193	8,312	118	820
	1880	1,110	1,056	7,363	152	1,059
	1890	1,153	1,925	6,999	174	1,252
	1900	998	764	5,357	116	818
11. Ruthenian	1870	1,116	1,343	7,925	128	759
	1880	1,150	1,156	6,835	139	821
	1890	1,066	1,114	6,582	147	869
	1900	851	875	5,202	116	693
12. Bessarabian	1870	964	2,561	14,846	102	590
	1880	917	1,983	11,544	117	680
	1890	788	1,586	9,209	111	462
	1900	651	1,086	6,070	148	828
In the 50 provinces of European Russia . . .						
		1870	664	1,456	9,329	169
		1880	655	1,238	8,345	183
		1890	631	1,135	7,294	187
		1900	602	1,026	6,474	145
						920

TABLE II.¹

REGIONS	YEARS	PERCENTAGE OF FARMS			
		WITHOUT HORSES	WITH ONE HORSE	WITH TWO HORSES	WITH THREE OR MORE HORSES
1. Northern	1882	18.			
	1888-91	16.3	44.2	24.7	14.8
	1893-96	18.0	47.5	23.7	10.8
2. North-Eastern	1882	12.7			
	1888-91	18.1	34.7	21.9	25.3
	1893-96				
3. Eastern	1882	12.8			
	1888-91	18.2	24.6	18.3	38.9
	1893-96	24.7	25.8	17.7	31.8
4. South-Eastern	1882	29.8			
	1888-91	41.5	29.1	16.8	12.6
	1893-96	38.5	28.9	16.9	15.7
5. Central Volga	1882	22.7			
	1888-91	27.6	35.5	21.0	15.9
	1893-96	33.6	39.3	17.6	9.5
6. Central Agricultural (a) Eastern group.	1882	27.1			
	1888-91	28.1	27.9	19.9	24.1
	1893-96	35.3	32.4	17.5	14.8
	(b) Western group.	1882	23.1		
		1888-91	23.4	24.1	22.3
		1893-96	29.4	29.5	21.1
7. Central Industrial	1882	22.5			
	1888-91	22.0	41.5	21.7	14.8
	1893-96	24.4	44.0	20.0	11.6
8. Baltic	1882				
	1888-91	7.5	32.8	21.3	38.4
	1893-96	8.1	33.6	22.0	36.3
9. North-Western	1882	17.9			
	1888-91	16.6	37.9	24.1	21.4
	1893-96	16.5	41.1	24.2	18.2
10. South-Western	1882	50.8			
	1888-91	51.0	5.1	24.6	19.3
	1893-96	55.1	5.4	24.0	15.5
11. Ruthenian	1882	46.4			
	1888-91	44.0	22.4	16.6	17.0
	1893-96	45.0	24.2	16.9	13.9
12. Bessarabian	1882	39.6			
	1888-91	39.7	9.6	30.2	20.5
	1891-96	34.6	7.9	30.1	27.4
Throughout the 50 provinces of European-Russia	1882	26.9			
	1888-91	27.8	28.6	21.9	21.7
	1891-96	32.2	29.1	21.2	17.5

We see that there has been a decrease of live stock on the peasants' farms. This decrease is ominously large; it amounts

¹ Materiali, etc., part i, p. 211.

to 30.8 per cent within thirty years. In 1870 there were 9329 heads on each 1000 farms; in 1900, there were only 6474.¹ Just as great is the decrease of farm horses. One thousand farms had in 1870, 1329 horses; in 1900, 920.² Still greater is the decrease of pigs and sheep and other small stock on Russian farms. There were, in 1870, 5469 heads on each 1000 farms; in 1900, only 3459, a decrease of 36.8 per cent. Our official documents acknowledge the fact of the gradual decrease of farm stock, greatly diminishing the economic power of the population. "The number of farms without horses increased, as did the number of farms with an insufficient supply of horses. At the same time we see a decrease in the number of farms with two or three horses, *i. e.*, in the more stable and better provided farms."³ Under Russian farming conditions, a farm without horses is no more a farm than a knife without a blade is a knife. Now we have seen, from the incomplete statistical data which the government gives us, that the percentage of horseless farms throughout Russia increased in the short period of 1882-1896 from 26.9 to 32.2.

More considerable than the decrease in farm stock is the diminution in the land allotments of the Russian peasantry. In the days of serfdom, the law required that the serfs should work but three days for their master. This law was not always enforced; the peasantry as a rule worked more than half of their time on the landlords' fields. The allotments of the peasantry in the days of serfdom were barely large enough to keep them alive. When serfdom was abolished the land allotments of the peasantry were considerably decreased. The village community, with its periodical land divisions and allotments, and the government's policy of keeping the surplus population on the land, for fear of creating a politically enlightened city proletariat, had the natural effect of decreasing the already insufficient land allotments in proportion to the natural increase of population.

The primary care of the Russian government has been the preservation of absolutism, and all measures, economic or

¹ *Materiali, etc.*, part iii, p. 212.

² *Ibid.*, part iii, p. 216.

³ *Ibid.*, part iii, p. 213.

educational, have been controlled by this consideration. The illiteracy of the peasants was treasured as the most precious jewel in the imperial crown; and as to the village community, Count Kisseleff, who for twenty years was engaged in shaping the destinies of Russia's peasantry, frankly admitted that

the periodical land divisions, which are so pernicious for any far-reaching farming improvement, have their bright side in not permitting the development of a proletariat. The village community, therefore, is a problem, the solution of which lies outside of purely economic considerations.¹

And Count Kisseleff acted accordingly. He forced the village community upon not less than 533,201 peasants who had never known this institution before.² M. Yermoloff, who till recently was the secretary of agriculture, has himself expressed the opinion that the peasant's right to land allotment in the village community system means, with the constantly decreasing size of the allotment, only the right to die of starvation.

The table on the following page shows the average decrease of the peasant land allotments in the fifty provinces of European Russia.

Small as these peasant land holdings are, they might have been sufficient in a country where education, self-reliance and honest work are encouraged. But not so in the empire of the tsar, where almost every educated man is suspected as a political criminal and where the education of the peasant has been systematically suppressed. About the suppression of education and the arrest of the mental development of the peasantry, about the government's almost insane craving for the preservation of ignorance, volumes could be written. Here a single characteristic fact must suffice us. Russia's censorship has excluded from general reading books like Spencer's works, Bryce's *American Commonwealth* and Fyffe's *History of Europe*. No books have been printed without the authorization of the

¹ Zablocki-Dessyatkovski, Count P. D. Kisseleff and his times (St. Petersburg, 1882), vol. ii, p. 199.

² Simkhovitch, Die Feldgemeinschaft in Russland (Jena, 1898), pp. 70, 71.

TABLE III¹

REGIONS	NUMBER DESSIATINES TO EACH MALE PEASANT		
	1860	1880	1900
1. Northern	7.6	6.1	4.7
2. North-Eastern	8.1	6.1	4.6
3. Eastern	9.5	6.5	4.8
4. South-Eastern	8.4	5.2	3.5
5. Central Volga	4.0	3.1	2.4
6. Central Agricultural.			
(a) Eastern group	4.1	3.0	2.2
(b) Western group	3.0	2.2	1.7
7. Central Industrial.	4.0	3.3	2.6
8. Baltic.	3.7	2.9	2.4
9. North-Western	5.0	3.3	2.2
10. South-Western.	2.9	2.1	1.4
11. Ruthenian.	3.3	2.5	1.7
12. Bessarabian	6.2	4.0	2.5
Throughout the 50 provinces of European Russia	4.8	3.5	2.6

censor. Of books permitted by the censor and actually on sale there are about 90,000. But of these books only about 2500 are allowed to be placed in village libraries, *i. e.*, about three per cent of the books admitted to general circulation.²

The constant moral, physical and economic oppression of the reigning bureaucracy has left the people no chance for progress and every chance for starvation. And the Russian people is starving. The statistical publications of the commission appointed November 16, 1901, to which I have so frequently referred, give figures which are supposed to show in how far the productivity of the peasant land is sufficient or deficient for feeding the peasant population and the farm horses, assuming that the peasant pays no taxes. Since the Russian peasant lives almost entirely on a vegetarian diet, it is estimated that he consumes in a year 20 *pud* of field products, and each farm horse is allowed 40 *pud* of oats. On this basis we find the following local deficits and surpluses:

¹ *Materiali, etc.*, part i, pp. 78, 79.

² See Miliukov, *Russia and its Crisis*, p. 202.

TABLE IV¹

REGION	FIELD PRODUCTS PER SOUL OF POPULATION			OATS PER FARM-HORSE		
	TOTAL (in pud)	OVER (+) OR UNDER (-) THE NORM OF 50 PUD		TOTAL (in pud)	OVER (+) OR UNDER (-) THE NORM OF 40 PUD	
		(in pud)	(in per- centage)		(in pud)	(in per- centage)
Northern	9.7	—10.3	—51.5	27.5	—12.5	—31
North-Eastern	15.9	—4.1	—20.5	46.0	+ 6.0	+15
Eastern	25.3	+ 5.3	+26.5	20.1	—19.9	—50
South-Eastern	24.5	+ 4.5	+22.5	11.4	—28.6	—72
Central Volga	15.8	—4.2	—21.0	33.6	— 6.4	—16
Central Agricultural.						
(a) Eastern Group .	17.7	— 2.3	—11.5	21.3	—18.7	—47
(b) Western Group .	12.0	— 8.0	—40.0	28.5	—11.5	—29
Central Industrial . . .	10.8	— 9.2	—46.0	25.4	—14.6	—37
Baltic	15.5	— 4.5	—22.5	34.2	— 5.8	—15
North-Western	12.4	— 7.6	—38.0	17.6	—22.4	—56
South-Western	13.7	— 6.3	—31.5	22.3	—17.7	—44
Ruthenian	13.5	— 6.5	—32.5	12.1	—27.9	—70
Bessarabian	37.8	+17.8	+89.0	5.8	—34.2	—86
Throughout the 50 provinces of European Russia	16.6	— 3.4	—17.0	23.6	—16.4	—41

These data show the most curious anomaly ever known in the economy of any country. Russia's rural, agricultural population is not a seller but a buyer of agricultural products.

A most thorough and admirable investigation undertaken in the nineties,² in which the allowances for food and fodder were smaller than in the recent governmental publication, showed the Russian peasantry divided into three groups. The first group, which had not sufficient grain for subsistence, numbered 45,358,078 peasants, or 70.7 per cent of the peasantry. The second, which had enough grain for subsistence but not enough for fodder, numbered 13,083,410 or 20.4 per cent. The third, which had a surplus in grain for both purposes, numbered 5,715,513 or 8.9 per cent.

It must be borne in mind that these data refer simply to the

¹ Materiali, etc., part i, p. 89, part iii, pp. 164, 165.

² Tchuproff and Posnikoff, Vlaniye urozhayev i khleba vikh cen. vol. i, pp. vi-ix, 1-96.

productivity of the peasant land in relation to the physiological necessities of the peasant. But before feeding himself and his horse the peasant is called upon to feed the state. The peasant is the chief taxpayer of the state, and his majesty's government has been fed, not on any surplus of oats or grain, but on the life and blood of the Russian peasant. Under these circumstances it cannot surprise us to learn that the peasant class is physically degenerating and deteriorating from year to year. This deterioration is indicated by governmental statistics showing the number of those freed from military service on physical grounds. In Russia, as the reader doubtless knows, every male citizen twenty-one years old is subject to military service, unless rejected on account of disease, insufficient height or other physical defect. Inasmuch, however, as the army has grown more rapidly than the country's population, men who would have been rejected some years ago are now pressed into service. It follows that the increase of the percentage of the rejected does not fully express the people's physical deterioration; the situation is worse than the figures indicate, although these are gruesome enough.

TABLE V¹
PERCENTAGE OF RECRUITS REJECTED FOR PHYSICAL DEFECTS

PROVINCES	1874-83	1884-93	1894-01	1874-83	1884-93	1894-01
Northern						
Arkhangelsk.	7.8	8.4	9.2			
Oloneck	6.4	6.0	7.7			
Vologda	5.8	12.2	16.5			
St. Petersburg	10.7	13.2	15.5			
Novgorod.	6.4	6.4	9.1			
Pskoff	5.0	7.6	12.4			
North-Eastern						
Viatka	5.1	10.4	10.2			
Perm.	8.2	7.8	8.8			
Eastern.						
Ufa	7.8	12.1	13.0			
Orenburg	5.8	6.4	10.5			
Samara.	4.1	6.7	8.9			
South-Eastern						
Astrakhan.	3.9	4.7	7.9	4.1	4.7	6.9
Territory of the Don-Kosaks.	4.4	4.7	6.5			

¹ Materiali, etc., vol. i, pp. 27-33.

TABLE V—*Continued*

PROVINCES	1874-83	1884-93	1894-01	1874-83	1884-93	1894-01
Central Volga . . . . .	. . . . .	. . . . .	. . . . .	5.8	6.2	10.2
Nizhni-Novgorod.	4.4	5.2	5.3			
Kazan	7.5	6.4	14.0			
Simbirsk	4.7	6.7	9.4			
Central Agricultural. . . . .	. . . . .	. . . . .	. . . . .	6.3	6.8	9.0
Eastern group . . . . .	. . . . .	. . . . .	. . . . .
Penza	4.9	5.3	8.2			
Saratoff.	5.8	5.8	7.6			
Tomhoff	6.1	7.0	8.1			
Voronezh	6.7	8.0	11.0			
Kharkoff	7.7	7.0	9.5			
Western group. . . . .	. . . . .	. . . . .	. . . . .	5.3	6.8	10.4
Kursk	5.7	5.6	8.7			
Orel	4.9	6.5	10.4			
Tula	4.8	6.6	11.1			
Ryazan.	5.7	8.8	12.2			
Central Industrial. . . . .	. . . . .	. . . . .	. . . . .	5.8	8.8	10.4
Vladimir	4.7	5.2	8.4			
Kostroma.	6.8	12.1	12.9			
Varoslav	4.7	9.2	13.5			
Tver.	6.1	7.9	10.7			
Moscow	7.1	11.9	11.1			
Kaluga.	6.6	7.7	5.9			
Smolensk	4.1	7.2	12.2			
Baltic . . . . .	. . . . .	. . . . .	. . . . .	10.1	9.3	11.7
Curland.	7.3	9.3	11.8			
Livonia.	10.6	9.0	12.7			
Estononia	13.4	10.1	8.2			
North-Western. . . . .	. . . . .	. . . . .	. . . . .	7.5	6.9	9.5
Vitebsk.	9.7	5.6	8.5			
Mohilev.	7.8	9.1	11.6			
Minsk	7.9	6.7	7.8			
Vilno.	6.8	6.8	10.2			
Kovno	8.9	8.8	11.5			
Grodno.	4.1	4.5	8.1			
South-Western. . . . .	. . . . .	. . . . .	. . . . .	7.0	8.3	11.0
Volhynia	8.1	10.7	10.4			
Kieff.	6.2	8.0	11.8			
Podolia.	6.8	6.1	10.8			
Ruthenian. . . . .	. . . . .	. . . . .	. . . . .	7.2	8.5	13.7
Poltava.	7.2	8.7	14.1			
Tchernigoff	7.2	8.3	13.2			
Bessarabian . . . . .	. . . . .	. . . . .	. . . . .	6.2	6.4	8.9
Ekaterinoslav	5.4	6.1	11.0			
Tauris	6.6	5.7	7.2			
Kherson	6.1	7.1	7.9			
Bessarabia.	7.0	6.7	9.0			
Throughout the 50 provinces of European Russia	6.4	7.7	10.3	6.4	7.7	10.3

IV

The Russian peasant has become a serf of the state. This is not a figure of speech. The local agricultural committees appointed by the government did not hesitate to point out this fact in discussing the legal disabilities of the peasantry and the taxes resting upon the peasant class. Especially clearly and forcibly did the district committees of Balashov and Borovitchi express themselves. The excessive property tax cannot be covered by the income from agriculture, and it is therefore shifted upon the person of the peasant. Then come the specific "personal services" (*naturalnia povinnosti*) consisting in personal work and in furnishing horses at the command of the local authorities.*

The direct taxes by no means represent the whole amount paid by the peasant to the treasury; where the direct taxes stop, the indirect taxes—excise taxes and the protective tariff—begin and put their finishing touches on the peasant budget.

Let us take a minutely itemized budget of a peasant household. The total yearly budget amounts to 390 rubles and 21 kopeks. In this budget will be found the following items:

<i>Supplies</i>	<i>Cost</i>	<i>Including taxes</i>
Vodka	29 rubles 10 kopeks	21 rubles
Sugar	26 " 86 "	7 "
Tea	21 " 11 "	10 " 40 kopeks
Cotton goods	10 " 89 "	3 " 80 "
Cloth	6 " 40 "	?
Kerosene oil	4 " 51 "	1 " 50 "
Tobacco	1 " 68 "	30 "
Matches	65 "	31 "
<hr/>		<hr/>
	101 rubles 20 kopeks	44 rubles 21 kopeks

In spending 101 rubles and 20 kopeks the peasant pays 44 rubles and 21 kopeks in indirect taxes. This amount does not represent the total amount of indirect taxation paid by the peasant household, since it is impossible in the nature of the case to analyze some of the entries.*

* I. M. Strakhovski, *Krestianski vopros*, in *Nuzhdi derevni*, vol. i, p. 115.

² Annenaki in *Nuzhdi derevni*, vol. ii, p. 559.

But the peasant has not only become a serf of the state; he has remained in economic dependence on the landlord. "Freed" with insufficient allotments of land, overburdened with taxes, he was tied to his land. Migration was suppressed; the colonization of Siberia and other regions was practically prohibited till very recently, till it became a political necessity. Th. G. Terner, a member of the council of the empire, tells us frankly why the government was so hostile to the migration of peasants: it was because the landlords wanted cheap labor and tenants for their land.

Single individuals may sacrifice, out of higher motives, their own interests to the common weal; but the attitude of classes of population towards economic problems has been always and everywhere selfish. That is why the landlord class was hostile towards emigration; and since it was the most influential class, its attitude found expression in the tendencies of the government. What in the days of serfdom was a matter of course and a necessity, appeared after 1861 as an extremely dangerous affair, which not only was not to be encouraged but was to be suppressed by every means. The question of peasant migration was classed as a revolutionary one: no well-meaning, conservative man was to touch it.¹

In order to pay taxes which their own land allotments could not furnish, the peasants were obliged to rent the landlord's land. Since there was practically no competition on the side of the landlords and a wild competition on the part of the land-hungry peasantry, a situation arose which, so far as I know, is unparalleled in human history. There developed a peculiar tenant system, which may be called a contract-labor tenant system. The land is rented every year at an extremely high figure, which the peasant is not presumed to pay, but to work out on the landlord's estate. The peasant's work is priced extremely low, as a rule at about one-half of the prevailing wages. These obligations the peasant, as a matter of fact, can not meet, and his indebtedness to the landlord increases from year to year. "The peasant can never clear himself from indebtedness to the local landlord, and being so dependent on

¹Terner, *Gosudarstvo i zemlevladenie*, vol. ii, pp. 119, 120.

the landlord, he is compelled to do all sorts of work."* "Accordingly," M. Lipski writes,

there can be no question that the renting of single dessiatines of land . . . is in the hands of the landlord a powerful means of lowering wages. . . . There can scarcely be any question as to the fact that the renting of single dessiatines in the province of Tambov has lost long ago its rental character; it should now be looked upon as one of the very hardest forms of labor contract. At the same time it is perfectly clear what rôle is played by the land that is leased out in dessiatines. It is an instrument through which the free peasant becomes a serf, who is giving his labor on conditions dictated by want.²

But not only does the landlord in this way get field labor at a cost much lower than the cost of subsistence of the laborers, but he gets also the use of their farming stock at the same rate. The peasant as a rule is obliged to use his own farm horses on the landlord's estate—so much so that a very large percentage of estates have ceased keeping any farming stock, relying entirely upon the use of that of the peasants. An investigation dating back to the beginning of the nineties showed that the district of Tombov, for instance, had 26 per cent of estates without farming stock; the district of Lebediansk, 33 per cent; Kirsanov, 30 per cent; Lipeck, 40 per cent, etc.³ The result is an extremely low productivity, not only of the peasant land but also of the noble estates. The peasant is often compelled to neglect his own fields to work on those of his landlord. But working with poor implements and half-starved horses, and being in a great hurry to get through with his task, the results are extremely unsatisfactory.

Not in one or two provinces of European Russia does this situation prevail: volumes could be filled with practically identical data relating to widely differing provinces and regions. Thus we hear from the provinces of Ryazan, of Podolia, of Kursk, of Tombov, of Vologda, of Ufa, the same story, varying

¹ Lipaki, *Ceny na rabotchia ruki pri zabolgovremennom naime, etc.*, 1902, pp. 107-109. Maslov, *Agrarny vopros v Rossii*, 1905, p. 259.

² Lipaki, pp. 112-115.

³ Maslov, *Agrarny vopros, etc.*, pp. 260-268.

only in style. Of course if the publication is an official one it reads like an idyl. Here is a sample:

After thirty years of experience with free labor, but few landlords, and those only to some extent, use permanent hired help and their own farming stock. Most of the landlords hire local peasants together with their farming stock and implements. The landlords keep up the most intimate economic relations with the contingent of peasants who work on their estates during the farming season year in and year out. The best way of getting into such intimate relations with the peasants is to rent them land, essential and indispensable to them but of no special use to the landlords.¹

Is not this a charming picture?

A good illustration of the existing situation is given by Maslov. He tells us that for some time the peasants of Simbirsk and the neighboring provinces were running away from their lands and settling quietly as landless proletarians on the Cossack lands of Orenburg. They were hiring themselves out to the Cossacks as laborers. It goes without saying that they have not become "capitalists" in working on the Cossacks' fields, "but they would shake with fright when they saw Russia [*i. e.* European Russia] even in a dream."²

The renting out of lands is but one mode of securing contract labor. The other mode is that of bread usury.

As I have already pointed out, the great bulk of the Russian peasantry does not harvest enough grain to feed the household throughout the year. As a rule, the peasant has used up his harvest by November or December, and he is then obliged to get money or bread on any condition offered to him. He goes to the landlord, who advances him bread or money but puts him under contract as a laborer for the coming season. From the province of Ryazan we hear that the peasant's labor is pledged to the landlord for two or three years ahead, and at a fabulously low rate. In the autumn the landlord contracts for the peasant's labor at a rate which, on the average, is 47 to 50

¹ *Sbornik statist. sved. po Tambovskoi gubernii*, vol. xix, pp. 28, 29. *Maslov, op. cit.*, p. 264.

² *Maslov, op. cit.*, p. 268.

per cent lower than the current wages. In other words, the peasant pays on the bread or the money received from the landlord 47 to 50 per cent interest for half a year.¹ High provincial officials,² being questioned on the subject by the central government, reported all forms of field labor contracted for ahead of time as forms of forced labor, the economic conditions of the peasantry forcing them into the position of serfs. Not only are such contracts permitted by the government, but their specific performance is enforced and their breach is treated as a misdemeanor. Article 101 of the law of June 12, 1886, directs the police to bring to the landlord all contracted laborers who have failed to appear or who have left the landlord's fields before the work was completed. Such a runaway peasant makes himself liable to detention in jail for one month.

V

The manifesto of February 19, 1861, ended with these words: "Make the sign of the cross, ye orthodox people, and pray with us for the blessing of God upon your free labor, the pledge of your domestic happiness and of the public weal!" This beautiful sentiment was, however, but a figure of speech. The manifesto itself did not give to the peasantry the rights enjoyed in Russia by other classes of the population. It merely stated that "the serfs will receive in time all the rights of freemen." That time has never come; the peasant has never been made the equal of other men before the law. And every law promulgated since 1861 in regard to the peasantry has been class legislation. The abolition act modified the situation of the peasant, but it did not free him. The reform of 1861 was a compromise measure which improved the political situation of the peasant but made his economic situation worse. The legislation of Alexander III was reactionary to an extreme. To the legislation of the present reigning tsar, his majesty himself obviously ascribes no value or significance; for law has been abolished throughout the Empire. Order and obedience are maintained

¹ *Otcherki po krestianskomu voprosu*, edited by A. A. Manuiloff, vol. i, p. 54.

² In Tombov, Vologda and Ufa.

by Cossacks' whips and Gatling guns for men and women and burning torches for the farm houses. Cavour was mistaken when he said, "Any fool can govern a people by military law." Not any, and not all the time. Only a year ago one traveling through Russia and asking the peasants, "Whose are you?" would hear everywhere the answer, "So and so's," giving the name of the local rural commander (*zemski natchalnik*). To-day many a peasant will answer, "I shall be my own."

The economist who would regard the Russian peasant as freed from serfdom might just as plausibly claim that Russia has a constitutional form of government, guaranteeing the life and liberty of the citizens. He might call attention to the first article of the manifesto of October 17, 1905, which reads:

We make it the duty of the government to execute this our inflexible will :

(1) To give to the population the immovable foundations of civic liberty on the principles of actual inviolability of person, freedom of conscience, of speech, of public gatherings and unions.

But this manifesto has had no effect on the realities of Russian life. A cynical but frank Russian statesman, when asked about the matter, answered plainly: The manifesto imposes upon the government the duty to grant the people inviolability of person and all sorts of freedom; but has the government promulgated any such laws? It has not; and therefore the people of Russia can claim no inviolability of person nor any of the enumerated liberties.

Very similar in this respect was the manifesto of February 19, 1861. It promised to the peasantry "in time" all the rights of freemen. But the time has not come. And it is not so much the lack of land that has ruined the peasantry as class legislation, the oppression of the bureaucracy and the suppression of education.

Alexander II criticised the abolition of slavery in America because the negroes were freed without land. They received no land, but they received freedom. And which is now better situated from an economic point of view—the American negro or the Russian peasant? Is the negro starving? But famine now

prevails in Russia. The Russian press claims this famine to be more intense than even in 1891, when 650,000 people died of starvation. And there has not been a single year in the reign of Nicholas II when famine has not raged in some part of Russia. These famines are not the unavoidable calamities of nature, they are logical and necessary consequences of the economic and political position of the peasantry. To maintain autocracy, the *zemstvo* schools were antagonized by the government and the peasants were kept illiterate. To prevent the accumulation of a politically advanced city proletariat, the village community system was maintained and extended, and the peasants were tied to land allotments too large to be buried in but too small to live on. In the interest of the landed nobility, colonization of the peasantry was suppressed till it was too late. The peasant has fed the whole bureaucratic machinery; and whatever was left him by the tax-gatherer has been appropriated by the landlord.

But the end has come. Financially the régime has become insolvent. Ordinary expenditures can be met by foreign loans. The bankers will make profits; but the innocent public might as well invest in notes issued by Mme. Therèse Humbert as in bonds issued by the autocrat of all the Russias. Politically the present régime will have to deal with peasant insurrections for land and liberty. There can be no doubt that sporadic agrarian risings will be put down; that the long exhausted fields will be enriched by peasant blood; that peasant homesteads will be burned as they were burned seven centuries ago by the Tartars, and as they have been burned during the last year by the tsar's punitive expeditions. But there can be no doubt that in time the peasants will get all the rights of freemen. They will get those rights because they will take them. The government still commands the bayonets; but these are peasant bayonets, and they are beginning to waver because the peasants are beginning to think.

VLADIMIR G. SIMKHOVITCH.

THE HOUSING PROBLEM IN SAN FRANCISCO

THE most serious aspect of the great disaster in San Francisco was not the loss of life or of accumulated property. It was the destruction of homes and the loss of incomes that for the time being staggered what was perhaps the most self-reliant and prosperous of American communities. The absolute loss of wealth was indeed great, but there are no outer indications that it had any pronounced effect on the health, spirits and general manner of life or even on the spending habits of the well-to-do people of the community. Some rich young men have come home from foreign parts and gone to work. Some families have reduced the number of their servants or have decided to live all the year in their suburban summer homes. Some men who were about to retire from active business have a probably not unwelcome excuse for changing their minds. On the other hand, retail merchants who assumed a revolutionary change in the purchasing habits of their customers and laid in a stock of inferior and cheaper goods have uniformly been disappointed, and have found that if they are to regain and keep their trade they must supply, even at extravagant prices, goods of the same high value that have been demanded in the past. There is perhaps no city with a higher per capita consumption; and extraordinary as it appears, this is as true to-day as it was a year ago. The persistence of expenditure may be accounted for in part by the circulation of insurance money and relief money; but it seems much more reasonable to attribute it to the fact that people do not suddenly change their established habits, and to a justifiable recognition of the probability that with the speedy restoration of factories, stores and means of communication and with the economic resources of the state intact, there will be no serious permanent reduction of income and therefore no occasion to lower materially the standard of living.

There has never been presented a more striking illustration

that it is not the stored and embodied wealth of any community that counts in its economic welfare, not even those parts of its wealth that are, as we say, "invested" in great office buildings and banks and impressive stores. It is the flow of capital from mines and farms and factories, through shops and warehouses and markets, that is of prime significance; and it is because even these essential factors of an industrial life and the homes which give a basis for domestic life were destroyed with the rest that San Francisco towards the end of April was stricken as if with economic and moral paralysis. It was not really so, but for a time so it seemed. There was much aimless moving to and fro on the streets. Food came from relief stations and not from markets, for the reason that there were neither markets nor money with which to buy in them. Clothing came from the second-hand bureaus. "Hand-out" methods took the place of purchase and sale. Great trucks moved through the streets, but they were filled with relief stores to be given away, as a few days earlier they had been filled with household effects of escaping refugees. Plumbers, carpenters, laborers, physicians, sanitary inspectors, nurses and relief workers were busy, but under a strange constraint, serving without compensation or with unofficial promises of pay from some undefined source. Ordinary economic relations were suspended. The great altruistic wave had already spent its force. The whole community seemed to be waiting, wondering, marking time. The slight earthquake shocks which were felt almost daily delayed the restoration of complete mental equilibrium; and yet everyone did what it was necessary to do, and the newspapers did not for a moment cease to talk bravely about the restoration which was to come in the future as if it were already taking place.

And then, about a month after the fire, with what seemed to the writer at the time a miraculous suddenness, the whole aspect of things changed. People moved on the streets as before, but now with evidently definite motives. Free transportation of passengers ceased. Commercial consignments of goods began to arrive. Provision markets, restaurants, clothing and other retail stores began to multiply. Crowds no longer besieged the mayor's office and central relief bureaus, although in the camps

and in the local districts systematic relief was to continue for many weeks. Trucks, delivery wagons and street cars resumed more nearly their normal functions. However imperfectly, and with whatever handicaps from loss of buildings and injury to streets, the ordinary economic life of San Francisco, for which preparation had been making for many days beneath the surface, was renewed. The restoration of light, of water and of sewers, the clearing of a few thoroughfares, the rebuilding of chimneys, the close inspection of the entire city, both on the surface and beneath it, for indications of any sources of infection, the anxious but satisfactory scrutiny of bank resources during the long holiday to ascertain whether it was safe to open for business, the rehabilitation of the municipal departments of police, fire, health and public works, had been going on from the very hour of the disaster; but it was not until near the end of May that the results were apparent and the new start may be said to have been made.

With that new start the general suspension of incomes, to which I have referred as one of the two really serious aspects of the disaster, came to an end. It is true that it did not come to an end for all, and there are doubtless some for whom it will not pass until there has been a complete readjustment by change of occupation or by removal. Physicians were most frequently cited as the class which had suffered most severely, but this is at once a tribute to the extraordinary good health of the community and an indication that prior to April there may possibly have been an over-supply in the medical profession. Clergymen may suffer because of the destruction of so large a number of churches and a lack of resources for immediate rebuilding. Salesmen and clerks are probably in less demand, although if the frame buildings which have been constructed for the purpose and in the converted Van Ness Avenue mansions nearly all kinds of retail trade are as active as in the old days. Rents and fixed charges are much less than formerly, and profits are said to be correspondingly greater. If this is so, there will soon be as much demand as ever for salesmen and clerks, and the same will be true of hotel and restaurant clerks and waiters, who for the first few weeks were perhaps in the most helpless condition.

of all. White domestic servants may have to follow the example of the Chinese and distribute themselves in other cities, but it is difficult to imagine any long continued excess of supply in this direction. As early as June, the rehabilitation committee declined to send domestics out of the city for the reason that the local employment bureaus reported that the demand was in excess of the supply. Stenographers and competent clerks have been in constant demand, and as early as August employees of street railways found themselves in a position to engage in a strike. Although it was not successful, the fact that it was undertaken at all may be regarded as evidence that there was no desperate lack of employment in those occupations. In fact, the street railways have been busier than ever on such lines as they have operated, and have found their profits scarcely diminished.

The greatest demand is naturally in the building trades and for common labor. Wages have persistently soared higher than was felt by the building trades council to be desirable; and it is not improbable that this will eventually result in the importation of carpenters, masons, bricklayers, plumbers and their helpers in such large numbers as to make impossible, after the existing abnormal conditions have passed, the maintenance of the supremacy which trade unionism has held for so long in San Francisco. Employers make no secret of their determination to end what they have considered an intolerable monopoly, and even hint at an organized effort to break down the Chinese exclusion laws as a means to that end.

The restoration of incomes has thus long preceded the rebuilding of the city; and for the next ten years or more we are likely to see the apparently anomalous and yet, in the light of ordinary economic analysis, perfectly intelligible spectacle of a prosperous community, with an exceptionally high standard of living, working under fairly normal conditions, perhaps with even a little more than the average American intensity, and enjoying meanwhile a fair share of the comforts and luxuries of life, but at the same time engaged in the very elementary task of rebuilding its business blocks, covering its bare hills again with dwellings, replacing its school houses and municipal buildings and putting its streets into condition for traffic.

The destruction of the homes of one-half the population of San Francisco—the other staggering blow to its temporal and spiritual welfare—is more fully to be considered. In a word this loss, unlike the loss of incomes, remains to be repaired. At this writing practically no homes have as yet been rebuilt; and it is reasonably certain that between fifty and one hundred thousand people—say twenty thousand families—will find themselves compelled to leave San Francisco definitely for at least a year, or to live in temporary dwellings in which no real home life is possible, or to crowd into basements or living rooms already sufficiently occupied but capable of overcrowding under compulsion, as living rooms have been crowded before in other cities, with consequences so well known as not to require enumeration.

Temporary shelter for the homeless has been provided by the establishment of camps, the tents for which were furnished largely by the war department from the special relief appropriation made by the government, and by the erection of barracks, also organized as military camps and located like the tent camps chiefly in public parks and squares. Before the end of April the writer called the attention of the emergency committee on the housing of the homeless—one of the sub-committees of the mayor's original committee of safety—to the necessity of more permanent housing, and suggested that a portion of the relief fund be devoted to the erection of attractive dwellings to be sold or rented to refugees then living in tents. The committee did not see its way to favorable action on this suggestion and, although the subject was informally discussed by all concerned, no definite step was taken until, on May 24, I presented to the finance committee of relief and Red Cross funds—the body which had been entrusted with the disbursement of the entire fund available for general relief—the following written recommendation :

I respectfully recommend that a special committee be appointed to take into consideration and, if found advisable, to carry into effect the formation of a business corporation to acquire land and erect inexpensive dwellings to be rented or sold on reasonable terms, such undertaking to be conducted on business principles and in such a manner as

to insure the security of the principal invested and a moderate rate of interest, and that, if found necessary, the capital for this undertaking be supplied from the relief and Red Cross funds in such amount and on such terms as may be determined upon by the finance committee on the report of the special committee.

This recommendation was adopted and a special committee of three members, of which I. W. Hellman, Jr., was chairman, went carefully into the subject, conferred with representatives of the New York chamber of commerce and the Massachusetts relief association, each of which bodies still retained approximately a half million dollars which had been raised for the relief of San Francisco, and finally reported to the finance committee in favor of the general plan. Before this report was acted upon, however, the army and the national Red Cross had been succeeded, on July 1, by the relief commission, of which the writer, as representative of the Red Cross, was chairman.

In an official report outlining the proposed work of this commission, prepared at the request of the finance committee and adopted by them on June 26, appeared the following paragraph:

The question of shelter appears to the commission to be the one of paramount importance—so important indeed as to require not only further consideration by the commission itself and by the finance committee, but also the coöperation of a strong board of consulting architects and builders, who would doubtless be willing to assist the commission in this capacity without compensation. Estimates are before the commission for the construction of temporary dwellings of from \$200 to \$400 each. His honor, Mayor Schmitz, has expressed the opinion to the commission that instead of constructing such temporary buildings every effort should be made to provide before the winter season a sufficient number of permanent homes of an attractive character for all who need to be housed. The commission is inclined to accept this view, although it is admitted that some additional temporary barracks may be found necessary if by September 1 it appears that there will be a shortage of permanent housing accommodations.

If the finance committee decides that it will be advisable that \$1,000,000 or some such amount be invested in acquiring land and erecting homes to be rented and sold on reasonable terms of monthly payment, it is probable that this sum can be greatly augmented by in-

vestment from private parties, if for any reason the government deposits are not found to be available for this purpose. The business can be so conducted as to pay a reasonable return on such investment and still make the dwellings of moderate cost to the renter and purchaser.

In the report from which the above quotation is made there was another paragraph outlining a plan for special relief and rehabilitation. The finance committee, however, instead of placing that particular work in the hands of the relief commission, carried into effect a decision which had been reached nearly two months earlier and appointed for this purpose a rehabilitation committee, of which committee also the writer was made chairman.

After two weeks' careful study of this subject and consultation with a board of consulting architects and practical builders, a report, which had been unanimously adopted both by the relief commission and by the rehabilitation committee, was presented on July 11 to the finance committee.

A plan had been suggested by Mr. M. H. De Young for the giving of a bonus not to exceed \$500 to any person who owned a lot in the burnt district and who was in position immediately to rebuild. The bonus was not to exceed in any instance one-third of the value of the building to be erected, and the money was to be paid to the contractor on the completion of the work, and not to the owner. One avowed object of the plan was to secure the early rebuilding of the old San Francisco. The opening paragraph of this report recommends, in effect, the adoption of this principle, and the remaining paragraphs deal successively with the shelter of the aged and infirm who are entirely dependent, and the provision of permanent homes for working men. It was anticipated that not less than \$150,000 would be required for increasing the temporary provision for such as could not be housed in any of these ways before the winter season. The report was substantially as follows:

The rehabilitation committee recommends the acceptance of the principle that workingmen and others of moderate means, whose homes were destroyed by fire, who own lots in the burned district, and

who cannot obtain from banks, building and loan associations or other society enough to rebuild without assistance, should be aided in rebuilding by a donation or a loan from the relief fund. This policy involves no new action by the finance committee except the appropriation from time to time of such sums as may be required by the rehabilitation committee to carry it into effect. It is exactly in line with the work which that committee was created to undertake.

Immediate action is desirable in the following directions :

(1) The first necessity is the shelter of those who are entirely dependent. We recommend for this purpose the erection, on city property, of an attractive permanent building or buildings, on the cottage pavilion plan, for the care of aged and infirm persons, chronic invalids and other adult dependent persons for whom it is not so much a question of rehabilitation as of permanent maintenance. We recommend that such building or buildings to be erected from the relief fund be large enough to accommodate 1000 men and women, and that the maintenance of the institution after it is erected be left to the municipality. Alternative plans would be to care for these aged and infirm persons in existing private institutions on a per capita weekly basis similar to that on which patients are now cared for in private hospitals, or to make an allowance in the nature of a pension for their care in private families. We believe that the erection of a special pavilion would be more economical and that it has the indirect advantage of enabling the city to secure an attractive modern public home for aged and infirm persons.

(2) The next and most serious problem is the supply of dwellings for families who ordinarily pay a moderate rental, who do not own land and have no considerable savings, but who are in receipt of ordinary wages. There are probably 5000 families now in tents or other temporary shelter who are in this position. Possibly, if those who are temporarily out of the city and who desire to return are included, this number may be 10,000. No accurate estimate is possible, for the reason that there is no information available as to what number has already permanently removed to suburban towns, what number has been absorbed in existing homes by the doubling-up process, and what number will build for themselves. What is certain, however, is that no real beginning has yet been made by private enterprises or otherwise in the erection of dwellings for the 5000 families of which we have knowledge, although nearly half of the long summer season which fortunately lay between the disaster of April and the winter season has already elapsed. It was, therefore, the unanimous conclusion of the

conference, and it is the official recommendation of the relief commission, that in addition to all that is done for individuals through the rehabilitation committee, some considerable contribution to the supply of homes should be made directly from the relief and Red Cross funds, either by financial assistance to private individuals or corporations in building, on a large scale, suitable dwellings on satisfactory terms, or by the creation for this particular purpose of an incorporated body which can make contracts and enforce legal obligations. It is therefore recommended that, unless the alternative suggested can be made immediately effective, eleven or more persons, including the mayor, the chairman of the finance committee and suitable representation of the national Red Cross, the executive commission and the rehabilitation committee, be designated by the finance committee to form a corporation under the laws of this state relating to corporations not for profit; that not less than \$1,000,000 be subscribed by the finance committee as capital, or as a permanent loan to this corporation; that the homes thus provided be sold on a monthly instalment plan to families who were living in San Francisco on April 17, and rented to those who are unable to purchase; that all income from rentals and sales after meeting necessary expenses be invested in the building of other houses or for such other public philanthropic objects as may be decided upon by the corporation, with the consent of the finance committee.

After one year it might be found practicable and desirable for the corporation thus formed to sell its remaining property and interests to savings banks or otherwise and to dispose of the entire sum thus obtained for the relief of those who were still at that time in any way in distress through the disaster, or, if there were no such distress, then for some public purpose which might be decided upon.

The essential thing at this time is that at the earliest possible moment some of the funds which are now lying idle in the treasury of the finance committee shall be put at work providing homes for the working people of the community. The plan which we have recommended is proposed, first, as a relief measure, because the tents will not provide proper shelter after October; second, as a measure of public policy, because in the interests of the community it is not desirable that San Francisco shall lose her present population of working people merely because there are not dwellings to be rented or bought; third, also as a measure of public policy, because it is desirable that workingmen shall have the opportunity to own their homes, and this opportunity is now afforded not on a charitable but on a reasonable and just business

basis ; and finally, because the intelligent and efficient carrying out of the plan proposed will enable the community to set a standard of attractive, sanitary, safe and yet comparatively inexpensive dwellings, which will have a beneficial effect not only in the immediate future but for the coming generation. The coöperation of the municipal administration in enforcing suitable conditions as to sanitation, light, ventilation, fire protection, *etc.*; of the architects in making plans for convenient and attractive homes at moderate cost ; of the building trades in getting these homes built ; and of the finance committee in advancing capital and creating a corporation which will ensure the purchasers against fraud or injustice, will solve the housing problem, and nothing less than this coöperation will solve it. In closing this report, however, the rehabilitation committee and the relief commission alike wish to emphasize the fact that there is no intention that the relief fund shall become a providence of the refugees, solving all their difficulties and relieving them of all individual responsibility. On the contrary, it is confidently expected that each family will to the greatest possible extent solve its own problem, find its own capital, decide on the plans for its own house and discharge its obligations for any money advanced as soon as practicable, and that, if these recommendations are adopted, the entire business will be so conducted by the rehabilitation committee, the executive commission and the corporation formed for the purpose of acquiring land and building homes, as to preserve in full integrity the fundamental traits of American character, individual initiative and personal responsibility.

Although it involves some repetition it will be worth while to incorporate the text of the resolutions adopted three days later without a dissenting vote by the finance committee, in order to show how completely this committee was in accord at that time with the views embodied in the above report. The resolutions were introduced by Mr. W. F. Herrin, the general counsel of the Southern Pacific railroad, and were as follows :

Resolved, That the finance committee of Red Cross and relief funds adopt the following plan and make the following appropriations for the rehabilitation of San Francisco :

First : That \$100,000, or such less sum as may be necessary, be used for the construction of a building or pavilion on the almshouse tract, San Francisco, to afford accommodations for the destitute people now in San Francisco, amounting to about 1000 persons.

Second : That not exceeding \$150,000 be used in the construction and repair of temporary buildings in the public parks to afford shelter for the homeless during the coming winter.

Third : That not exceeding \$500,000 be used as donations to enable lot-owners in the burned district to rebuild their homes in such district, such donations to be made as follows : To each lot-owner shall be given a sum equal to one-third of the cost of the building to be constructed on his lot in the burned district, such donation, however, not to exceed in any one case \$500, and no more than one donation shall be made to any one person or family. Such donation to be paid to the contractor when the building is completed. This offer to remain open until the first day of October, 1906, unless this appropriation of \$500,000 is sooner exhausted.

Fourth : That not exceeding \$500,000 be used in making loans to those—whether owners or tenants—whose places of residence in San Francisco were burned in the great fire, such loan to be used in building new dwellings anywhere in San Francisco on a lot owned by the person to whom such a loan is made, such loan to equal one-third of the cost of the building, not, however, to exceed in any case \$1,000, and no more than one loan to be made to any one person or family. Security for such loan to be taken by way of second mortgage upon the building and lot if necessary, the borrower to pay three per cent net interest. This offer to remain open until the first day of October, 1906, unless this appropriation of \$500,000 is sooner exhausted.

Fifth : That not exceeding \$2,500,000 be used in the acquisition of tracts of land in suitable and convenient locations in this city and county and in the erection of buildings thereon for dwelling purposes, such buildings to be either cottages, two-story dwellings or flats containing apartments of from three to six rooms and bath each, costing from \$750 to \$2,000 for each cottage, two-story dwelling or apartment, to be erected as expeditiously as possible, and to be sold at cost for cash or upon the installment plan to bona-fide residents of San Francisco who are engaged in some business or employment.

As moneys are returned to the fund by repayment of loans in subdivision fourth, or of instalments in the purchase of the above buildings, such money shall be re-invested in the same manner as in the first instance. When the rehabilitation of San Francisco shall have been accomplished, any money remaining in the fund shall be disposed of for the benefit of the people of the city and county of San Francisco.

Resolved, further, that for the purpose of carrying out the foregoing proposals, a corporation be organized under the laws of the state of

California with the powers necessary for the purposes required; that the incorporators of such corporation shall consist of the members of the finance committee of the relief and Red Cross funds, together with the governor of the state of California and the mayor of the city and county of San Francisco, said corporation to have a board of directors eleven in number, and from such board of directors an executive committee of three shall be chosen with full power to transact the business of said corporation, subject, of course, to the supervision and approval of the board of directors.

On the creation of the corporation, it was decided that it should take over complete responsibility for relief work and the management of camps, as well as the building operations for which it had at first been proposed. This course greatly simplified the relief administration and was in all respects advantageous.

Unfortunately, however, whether because of this increased responsibility or for other reasons, the executive committee of the corporation has reached the conclusion that the building of homes with capital supplied from the relief funds is impracticable. The reasons assigned for this decision, which was reached before the end of August, were that the amount of the relief fund would not be sufficient, after meeting the other demands upon it; that there would not be time to build homes before the winter season; and that to enter upon the plan of selling and renting homes would perpetuate the relief fund instead of disposing of it all, as donors intended, in the immediate relief of the distress caused by the earthquake and fire.

While these are weighty reasons and entitled to respectful consideration, they do not appear to the writer to be conclusive. The funds would have been sufficient, assuming the coöperation of the Red Cross, the New York chamber of commerce and the Massachusetts relief association. Representative labor leaders in San Francisco strongly favored the plan, looking upon it as the greatest opportunity ever likely to be presented to the workingmen of the community to become home-owners. The secretary of the building trades council appeared twice officially before the finance committee in support of the plan. The perpetuation of the fund might readily have been avoided by the plan suggested in the report; and even if not enough

permanent homes could have been built to house the entire tent and barrack population before November, at least a large number of houses could have been completed, and this consideration should have weighed in favor of prompt and vigorous action rather than as a reason for giving up all attempt. The arguments presented in the report of July 11 remain unanswered.

The decision of the corporation is to expend a much larger amount than had been proposed in the erection of temporary dwellings in parks and public squares, providing light, heat, and plumbing and charging occupants a small rental for these conveniences; to give the proposed bonus not to exceed \$500 to enable lot-owners in the burnt district to rebuild; and greatly to enlarge the proposed accommodations for helpless dependents. The temporary dwellings are light wooden structures of three rooms, costing \$150 each. They are better than tents, and better, while they last, than some dark city tenements, but they offer no solution of the real housing problem.

Doubtless the members of the executive committee of the corporation have used their best judgment. The burden of decision and the responsibility for its consequences are upon them. To one sympathetic observer, who has ample reason for trusting the judgment and wisdom of those who are carrying this burden of responsibility, it cannot be made to seem otherwise than that a golden opportunity has been missed, and that by choosing to build almshouses instead of comfortable homes the corporation is unintentionally adopting a policy which will tend to fill almshouses and eventually lessen the demand for homes. It is the peculiar and well justified boast of San Francisco that it has had few or no pauper dependents. It is earnestly to be hoped that the barracks and temporary quarters for the aged and helpless which they are now building so hurriedly may safely be destroyed in a year or two at most—and that they will not remain, as has happened under somewhat analogous circumstances in the city of Washington, to aid subtly in creating a class of residents fit and contented to dwell in them.

EDWARD T. DEVINE.

AMERICAN ADMINISTRATIVE TRIBUNALS

THE safeguards of civil liberty find expression in few principles of greater importance than that embodied in the maxim that every man is entitled to his day in court. And the almost universal belief is that the rule is without exception. A day in court in which there shall be adjudication of the very right of the matter—this alone satisfies the general conception. A judicial determination upon some mere matter of regularity of procedure does not afford such satisfaction. It can not be long, however, before it will be recognized that this idea, so generally entertained, is false. For in the United States we have a body of administrative tribunals, not courts, whose decisions are in many instances as final as those of the regular judicial establishments. They limit liberty and control property; and in the matters in which their decisions are final, the day in court becomes a day in the presence of administrative authorities only. And numerous as are our courts, the body of our administrative tribunals is perhaps larger. Under a strict definition they may be numbered by the scores, under a more liberal definition by the hundreds. Though they are not dignified by the formal recognition which has been accorded to the administrative tribunals of France, Germany and Austria, their power is in some matters even more substantial.

The failure to give adequate attention to the institutions of American administrative law, and particularly to the administrative tribunals, has resulted more unfortunately than is realized. Some of the most trying questions that have arisen of recent years in state and national politics and public law have remained unanswered or have been answered only partially because of the uncertainty in which our administrative law is involved. And the question which now occupies public attention in the United States, that of railroad rate regulation and the interstate commerce commission, has vexed the minds of Congressmen as it would not have vexed them if the limits of the administrative

function had been carefully ascertained.¹ An answer has been given to that question. But will it prove satisfactory and adequate? Hardly a plan was proposed as to the constitutionality or economic adequacy of which there was not profound scepticism. This scepticism would have been much diminished if the administrative aspects of the problem had received due attention; certainly it was justified so long as they were almost entirely neglected. And even though both the constitutional and economic questions be answered successfully, the solution will not be adequate until certain of those great questions of administrative law which lie below the surface are answered.

This condition is characteristic of the times. More and more it is coming to be seen that it is from the solution of the administrative problems before us that we are to receive the greatest practical benefit. Writers on the economics of taxation, while they would not recognize that all has been done that can be done in fixing the principles of justice in taxation or determining the effect of various taxes on labor and capital, would, with few exceptions perhaps, admit gladly that the time is at hand for testing certain of their accepted principles, or, in other words, that the questions of administration are the important practical questions of the day. Let the laws of railroad taxation in the United States during the last fifteen years be read one by one, every provision being scanned.² He who but runs through them will have read an indelible lesson of the need of administrative betterment. Let the operation of these laws be examined in detail, especially from the standpoint of the valuation of the property, and he will be left blankly wondering that so little has been done in places where there is so much to do.³ The administration of the laws of railroad valuation in the United States at the present day is often farcical in the extreme.

President Roosevelt in his message of December, 1905, recommended that the power to fix a maximum rate for rail-

¹ Cf. Hearings on Railroad Rates, by the Senate Committee on Interstate Commerce (1905), pp. 853, 854.

² Cf. the Interstate Commerce Commission Report on Railways in the United States in 1902, part v.

³ See Census Bulletin no. 21.

road carriage be placed in the hands of a body which should be "unequivocally administrative." This emphatic declaration endorses the importance of the administrative problem. Yet when may a body be said to be unequivocally administrative? As long as the present decisions stand,¹ it will be insisted that there is equivocation, however unintentional, in any proposal to invest an administrative body with the "legislative" power to make a rate. In the present condition of American public law the making of a perfect distinction between legislative, administrative and judicial powers is a matter of great difficulty. It is not to be wondered at that the powers of the interstate commerce commission—to take but a single instance—have been variously described as legislative, administrative, judicial, quasi-legislative, quasi-administrative and quasi-judicial. Precision is unattainable until the courts have expressed themselves in much greater detail than they have done. The dearth of decisions upon this subject by the United States supreme court is astonishing. It appears that not until the year 1893 did this court express itself upon the fundamental question of the power of Congress to delegate its legislative powers to the president.² The assertion then made—that Congress cannot delegate legislative power—was without reservation, but it has come very late in our history. And after all, inasmuch as it opens a wide and uncertain field for the exercise of the power of executive regulation, it affords but a small contribution toward the precise delimitation of the legislative, the executive and the administrative spheres, and the determination of the cases in which these spheres may overlap. In France during the last dozen years there appears to have been an ever-mounting tide of discussion regarding the separation of powers and of functions.³

¹ See Social Circle case, 162 U. S. 184; Cincinnati Freight Bureau case, 167 U. S. 479. For the commission's conclusion as to the effect of these decisions see 7 I. C. C. Rep. 286; for summary of the law, Judson on Interstate Commerce, sec. 123. But see W. C. Noyes, American Railroad Rates, pp. 206, 207.

² Field *v.* Clark, 143 U. S. 649. And see Fairlie, National Administration of the United States, p. 25.

³ See E. Artur, *De la séparation des pouvoirs et de la séparation des fonctions de juger et d'administrer* (Paris, 1905), and Réné Jacquelin, *Les principes dominants du contentieux* (Paris, 1899). The latter book is divided into two parts, the first treat-

It is much more than the great theory which Montesquieu made of it in the eighteenth century. As our own present experience attests, it involves practical problems of surpassing difficulty.

The administrative tribunals.—The administrative authorities in the United States which have powers of adjudication, or of discretionary determination, have usually been termed tribunals rather than courts. This term has been employed by the president, the circuit court of appeals, officers of the department of justice and writers on administrative law here and abroad. But the American administrative tribunal, because of the rank growth of the law on which it depends, is generally a thing of indefinite outlines. In a broad—and, it must be confessed, loose—sense the term "tribunal" may be, and has been, applied to all administrative officers exercising discretionary powers. If we use the term in this sense, then the administrative tribunals in the state and national governments are manifold in number and type. But there is a narrower usage—yet still an indefinite usage—which applies it only to administrative authorities which either in their procedure, their constitution or their powers, or in one or more of these matters, closely resemble courts of general jurisdiction.¹ It is rather with the latter class that we are here concerned, for while the former is well known, in connection with the law of public officers, the latter has scarcely a niche in our accepted legal classification.

The administrative tribunals of the states and of the nation are even more distinct, each from the other, than are the state

ing of separation of powers, the second of separation of functions. The discussion of this question is not confined to special works. In many general treatises on administrative law it plays a prominent part.

¹ In the present state of the administrative law of the United States it can hardly be of advantage in so brief an article to make more precise distinctions. But if the law were scientifically developed it might be helpful to distinguish two classes of tribunals, upon somewhat the same basis as that upon which the Germans distinguish between the authorities entertaining the *Verwaltungsbeschwerde* and those entertaining the *Verwaltungsklage*. There might prove to be much of practical value in this. It would assist in the distinction and analysis of the ordinary administrative control and of administrative litigation. See Hue de Grais, *Handbuch der Verfassung und Verwaltung*, pp. 73-75; O. von Sarwey, *Allgemeines Verwaltungsrecht*, pp. 152, 153, in Marquardsen; and the article on "Verwaltung" in Meyer's *Konversations-Lexikon*.

and national judicial courts. They form two separate systems. Though the federal judges have displayed a tactful policy of non-interference, the national courts may in some cases control the state courts, directly or indirectly. But the national administration seldom or never interferes with the state administration by administrative as distinguished from judicial process. Their remoteness is even more emphasized by their diverse characters and by the difference in the matters with which they have to deal.

The state boards, bureaus or offices which have the power of adjudication or discretionary determination, and which are assimilated in their procedure, constitution or powers to the judicial courts, are of many kinds. They range from dairy commissions up to boards of health and superintendents and boards of education; and of recent years they are to be found in almost every branch of commonwealth administration. One of the most remarkable tendencies in commonwealth administration at the present time is the rapid multiplication of such authorities. In 1903 alone, about 140 new permanent state boards and offices were created, as well as some 75 temporary commissions and 39 special investigating committees.¹ Of course many of these organs of government are not tribunals even in the loose sense in which the term is here employed, but are more properly merely administrative authorities.

The administrative tribunals of the national government are more highly developed than those of the states, one of them being so like a court in its organization and procedure as to have received that designation. The more conspicuous among them are the boards of general appraisers, the comptroller of the treasury, the interstate commerce commission, the court of claims, the commissioner of internal revenue and the secretary of the interior. There are in addition many minor and inferior tribunals. Their number is accounted for not so much by the variety of subjects which fall under the national administration as by the hierarchical organization of that administration. This has resulted in a system of appellate juris-

¹ New York State Library Bulletin, Review of Legislation for 1903.

diction which is seldom found in the states. Among these minor tribunals are the commissioner of pensions, the board of pension appeals, the patent office's board of examiners-in-chief, the register and receiver of the general land-office.

French writers on administrative law, such as M. Laferrière,¹ whose attitude is adopted by M. Jacquelain, refuse to consider our federal court of claims as in any sense an administrative court, because, "like all the federal courts," it is subject to the control of the supreme court. It is, says Laferrière, a judicial tribunal, deciding administrative causes. These two writers seem to take the position that if the court of claims cannot be considered an administrative tribunal, much less can any other board or office that is found in the United States. For this reason, perhaps, they do not examine the other tribunals in any detail. And seemingly they fail in due appreciation of the fact that many acts of our administrative tribunals may not be reviewed by the courts.² The courts may entertain jurisdiction to ascertain whether these tribunals are competent to act in the particular case, but this is far different from actual control.

It is also to be noted that the interstate commerce commission has generally received little or no consideration in the scanty literature of American administrative law. The reason for this is not clear, but the most plausible explanation seems to be found in the fact that the commission, except in so far as it may be deemed an arm of the criminal courts, does not have to do with the relations between the government and natural or artificial persons but rather with the relations between such persons themselves. From this point of view it is like the ordinary civil courts.³ In the judgment of the present writer the inter-

¹ Laferrière, *Traité de la juridiction administrative* (1896), pp. 120, 121.

² How strong the statement of the American situation with respect to this matter may be made will be suggested by an extract from a recent book on American administrative law: "Within the scope of its jurisdiction the adjudication of the administration is final unless there be a provision to the contrary." Wyman, *Administrative Law*, sec. 115. But it is evident from other passages in this book that the author would qualify this statement somewhat. It is too general.

³ But it is of course true that the commission may undertake a general or special investigation on its own motion, for the purpose of securing the enforcement of the law. In this it represents and acts for the government directly.

state commerce commission is sufficiently peculiar to be placed in a category by itself; but it should not be excluded from the list of administrative tribunals, in any broad consideration of this subject, especially as its activity seems likely to develop important principles of administrative law.¹ It should finally be noted that, to make the consideration of the subject complete, the activity of the ordinary courts in their employment of the injunction and other extraordinary legal remedies would have to be considered, but this topic is beyond the limits of the present article.

Powers and Organization.—It is in the powers and organization of the administrative tribunals that their chief interest lies. What are the extent and limits of their powers of "administrative adjudication?" The decisions of the state courts and of the United States supreme court indicate that the United States constitution and the constitutions of the states do not bar the grant to administrative authorities of the power to make a final determination after a hearing.² Even when the determination seriously affects property rights, its finality has in many cases been upheld, though of course the administrative authority, like a court, must be careful to keep within its jurisdiction. Thus some of the state courts have admitted the finality of the determinations of boards of health in respect to nuisances. It is true that certain of these cases preserve a judicial review of such determinations through the writ of *certiorari*; but the review does not extend over the findings of fact but is limited to the jurisdiction of the board and the regularity of its proceedings.³ The law of some states affords even less protection from arbitrary action in this matter than the French law, though a bill of rights is unknown to the French constitution.⁴ The United States supreme court has held that the finding by administrative officers of the amount of a tax to be paid (the tax being a

¹ The commission believes itself to be distinctly an administrative body. Thus it says: "The commission is not a court of equity but an administrative body charged with the enforcement of a particular statute." 8 I. C. C. Rep. 443 at 452.

² Goodnow, *Principles of the Administrative Law of the United States*, p. 339.

³ *Ibid.*, pp. 337, 338, and cases cited. Cf. Freund, *Police Power*, sec. 123.

⁴ Cf. Berthélémy, *Traité élémentaire de droit administratif*, pp. 356-359.

license tax) was final, even though the complainant had no opportunity to be heard before the assessment of the tax.¹ The same court has held that the determination of an administrative authority is final as regards the admission into this country of Chinese who claim that they are American citizens.² An administrative tribunal may thus in effect deprive a man of his citizenship. And these findings will not be reviewed by the courts—at least in the absence of complaint of abuse of discretion—even on the writ of *habeas corpus*. The conclusion from this must be either that an administrative tribunal will protect the liberties of the individual as scrupulously as a judicial court, or that the citizen has been deprived of one of his greatest historic rights.³ Perhaps the former is the true conclusion. In any event, these decisions indicate the great power that may be granted to the administration.

The determination of the board of general appraisers upon a question of valuation is final, and it is stated that only upon allegation of fraud will a rehearing be granted.⁴ The decisions of state educational authorities are often not subject to review by the courts. The authority of the New York commissioner of education in the decision of appeals from lower school authorities is final. The code of Iowa provides that the decision

¹ McMillen *v.* Anderson, 95 U. S. 37, and Cary *v.* Curtis, 3 Howard, 236, cited in Goodnow, *op. cit.* p. 336.

² United States *v.* Ju Toy, 198 U. S. 253.

³ Mr. Justice Brown, with whom Mr. Justice Peckham concurred, said in dissenting: "It has been seen that under these rules [concerning immigration] it is the duty of the immigration officer to prevent communication with the Chinese seeking to land by any one except his own officers. He is to conduct a private examination with only the witnesses present whom he may designate. . . . If this be not a star chamber proceeding of the most stringent sort, what more is necessary to make it one? I do not see how any one can read these rules and hold that they constitute due process of law for the arrest and deportation of a citizen of the United States. . . . Such a decision is to my mind appalling. By all the authorities the banishment of a citizen is punishment, and punishment of the severest kind. . . . This petitioner has been guilty of no crime, and so judicially determined. Yet in defiance of this adjudication of innocence, with only examination before a ministerial officer, he is compelled to suffer punishment as a criminal and is denied the protection of either a grand or petty jury." *Ibid.*, pp. 268, 269, 273.

⁴ Fairlie, *op. cit.* pp. 102-104, and cases cited.

of the state superintendent of public instruction on appeal shall be final, and the supreme court of the state has refused to interfere with such decision when the superintendent has acted within his jurisdiction.¹ It is curious to note that in an early case this court described this function of the superintendent as "ministerial." Later it called it "judicial;" then "*quasi-judicial*." The terms "administrative," "*quasi-administrative*," "discretionary," etc., have been applied elsewhere. Such are the mutations of the judicial mind. And how well they illustrate the pains with which anything like a scientific nomenclature for the administrative law is born! The existing nomenclature has all the defects of a fortuitous development.

Not only may the jurisdiction of the administrative tribunal be final; in some cases it is also exclusive. In others it is concurrent or alternative with that of the courts.² Some decisions by these tribunals are binding upon the administration, but are subject to review and modification by the courts. And if the authority in some cases is of great importance, in others it is shadowy. The interstate commerce commission was at first believed to have very material powers, but to-day it is characterized as merely "an investigating and prosecuting administrative body, whose findings are given a *prima facie* force in judicial proceedings."³ Justice Jackson in the Kentucky and Indiana Bridge case, the first important decision under the act to regulate commerce, described the commission as the referee

¹ Section 629 of the code of 1899 of North Dakota provides that the state superintendent "shall decide all appeals from the decision of the county superintendents"; it gives him power to prescribe and cause to be enforced rules of practice and regulations pertaining to appeals, and requires him to keep a record of all his official acts. Webster mentions twenty-eight states in which the appellate jurisdiction has been expressly conferred upon central educational authorities, and says: "This appellate jurisdiction of the state superintendent is one of the really strong tendencies toward centralization which the latter half of the century has developed." See W. C. Webster, Recent Centralizing Tendencies in State Educational Administration (1897), pp. 73, 77. In some states even the county superintendent has an extensive final jurisdiction. See W. A. Rawles, Centralizing Tendencies in the Administration of Indiana, pp. 119, 120.

² Wyman, *op. cit.*, secs. 113, 114.

³ Judson, *op. cit.*, sec. 48.

of each and every circuit court of the United States.¹ It may also institute proceedings in the courts, "and thus be a prosecutor in the same cases wherein it has acted as judge."²

The incidental powers of the administrative tribunals vary quite as widely as their determinative authority. The power to subpoena witnesses and in effect compel them to testify is possessed by some tribunals and is totally denied to others. It is of course true that in those instances where this power is possessed, the actual punishment for contempt—with rare exceptions, if any—will be imposed by a court. In some cases the administrative tribunal is so constituted and its powers are of such a nature as to admit of self-execution of its orders. A board of health may thus not only order a quarantine but, in the exercise of its police power, it may enforce it. The judgments of the federal court of claims are of themselves mandatory upon the secretary of the treasury. But for the actual enforcement of its orders the administrative tribunal must very generally depend upon the assistance of a court.³ The scope of the order which may be issued by the administrative authority is determined by common law or statute, as indeed is the extent of its powers generally. Thus the definition of nuisances and the scope of an order of abatement are largely matters of common law. The statute may give an administrative tribunal power to issue an order so general in scope as in effect to amount to legislation. In the American Warehousemen's Association case the interstate commerce commission, in reliance upon the statute and a decision of the supreme court, while expressly negativing its intention "to make any order in this case as such," issued a general order requiring carriers to state in their tariffs what free storage was granted and the terms and

¹ *Ky. and Ind. Bridge Co. v. Louisville and N. R. Co.*, 37 Fed. Rep. 567; Judson, *op. cit.*, secs. 277, 278.

² Judson, *op. cit.*, sec. 278.

³ Thus it is said that the only means by which the state superintendent of public instruction in Indiana can enforce his decisions and orders is the writ of *mandamus*. Rawles, *op. cit.* p. 124. Contrast the power of the New York state superintendent to enforce his decisions against any school officer by exercising his power of removal or by withholding the district's share of the state grant. Fairlie, *Centralization of Administration in New York State*, p. 44.

conditions under which it was granted. Instructed by the abuses in the particular instances the commission thus made a regulation to meet the general situation.¹

It is apparent from the preceding discussion that even the property and liberty of the individual are in some measure subject to administrative tribunals, and that the review of the action of these bodies by the courts is frequently no more than a review for regularity. But on these points the courts are sensitive. Liberty and property are their special wards, just as the private law is their peculiar demesne. This explains the contention of some lawyers that power to make a rate could not be given to the interstate commerce commission because the exercise of such a power would amount to a taking of property, and the milder contention that the courts must be allowed to step in whenever they deem the rate confiscatory. One of the most tangible expressions of this jealous devotion to the authority of the courts in the United States is found in the extent to which contracts are kept under judicial control. Even when the power of the administrative tribunal is plenary with respect to other matters, it may be denied any shred of authority over contracts. On the other hand in those countries, notably France, where the administration is more scientifically organized, there is a division of authority. In France the administration may act in three different capacities in making contracts: first, in connection with its functions as superintendent of the private domain; second, in connection with its administration of public services; and third, in connection with its action as *puissance publique*, for example in connection with its concessions of certain franchises or privileges. In the last case the contract is said to be administrative in its nature, and the administrative tribunals therefore almost necessarily have jurisdiction over it. In the first and second cases the contract is administrative only when the law declares it to be so; hence in these cases the ordinary courts have sole jurisdiction, subject to exceptions, the exceptions being more frequent in the first case than in the second.²

¹ American Warehousemen's Association *v.* Illinois Central R. R. Co. *et al.*, 7 I. C. C. Rep. 556, at 591 and 592.

² Laferrière, *op. cit.*, vol. i., pp. 587, 588. See also, Simonet, *Traité élémentaire de droit public*, p. 112.

Many of the American administrative tribunals indeed have jurisdiction in respect to contracts, but it is a ragged, uncertain, and in some cases almost accidental jurisdiction. The comparative precision of the French law is absolutely wanting. This is not to say that the French law is without defects. Certain of the complexities which have resulted from the separation of its administrative and judicial courts have at least the factitious character and the superficial absurdity of some of the fictions of our common law.

Administrative procedure.—The administrative tribunals of the United States differ as much in their processes as in their powers. In some of them the procedure has much of the formalism of the regular courts. In general, while they have their own peculiar make of red tape, they are impatient of the punctilious give-and-take of plea, demurrer, replication, motion and amendment.¹ They aim at expedition and economy. They are primarily executive agents and as such prone to take the substance and let the shadow go. The very spirit of administration is the accomplishment of things. This may and no doubt does at times result in the sacrifice of rights. But safeguards are established. For example, in the case of pension claims, after the preliminary adjudication of fact and law there may be a reference to the commissioner of pensions, and then an appeal to the secretary of the interior which is in effect decided by a special board of pension appeals. Safeguards in the way of administrative appeal in cases of interference in applications for a patent and in cases of protest before the land office are even more detailed and conservative of rights. Still the administrative tribunals incline toward the laxer rules of *ex parte* proceedings. These tribunals are often as well satisfied by written as by oral testimony. The rules of evidence are little known to them and even less employed. The court of claims acts without a jury, the court itself being judge of both the law and the facts. Indeed it may be said that the jury

¹ "Things are done in administrative adjudication which could never be done in judicial process. Principles are violated in administrative process which are fundamental in the courts. Often the whole solemn procedure is upset so that there may be prompt administration." Wyman, *op. cit.*, sec. 119.

system is foreign to the administrative tribunals. Parties whose names do not appear on the record are often allowed to intervene with little or no formality.¹ The interstate commerce commission, in its more important investigations, frequently extends a general invitation to all interested to appear and testify before it.² In numerous cases it has allowed the attorneys of special interests to displace its own attorneys, and this has generally been much to the advantage of the inquiry.³ Examination of the testimony in some of the commission's inquiries reveals that at times "a voice" has asked a question and "a voice" has made reply.⁴ The evidence given by such mediums in the commission's seances appears as a part of the printed record and no motion for its exclusion seems to have been made.

Some further light is thrown upon the methods of administrative tribunals by an examination of their respect for their own previous decisions. The influence of that sovereign principle of the common law which bids the court to follow precedents prevails even here. It could not well be otherwise in a country whose jurisprudence is Anglo-Saxon. Thus the school tribunals in the states frequently publish extensive reports or copious digests of their decisions for the guidance of their successors. The decisions of the court of claims, of the treasury, of the comptroller of the treasury, of the interstate commerce commission and of other administrative authorities are published. The comptroller of the treasury has held that a decision of a comptroller should not be reversed by a successor upon the presentation of a case involving the same state of facts unless there was a manifest error in the interpretation of the law.⁵ Many other illustrations of this attitude might be given. The interstate commerce commission has manifested a keen sense of the

¹ See 1 I. C. C. Rep. 144, at 146; 2 I. C. C. Rep. 122.

² See printed testimony in the Grain and Grain Products case, p. 183.

³ *Ibid.*, p. 182; printed testimony *in re* Transportation of Freight by Common Carriers in Cars not Owned by said Common Carriers, p. 5; Printed testimony *in re* Alleged Unlawful Rates and Practices in the Transportation of Coal and Mine Supplies by the Atchison, Topeka & Santa Fé Railway Company, p. 6.

⁴ *Ibid.*, pp. 125, 127.

⁵ Decisions of the Comptroller of the Treasury, vol. iv, p. 153.

importance of continuity in its interpretation of the law. But after all, the application of the rule which dictates adherence to established principles is quite different from its application in the courts of law. Administrative tribunals are not careful to make due distinctions between the dicta and the rulings in preceding cases. Often their findings are based so distinctly upon the special facts of the single case that precedent can hardly be said to exist. An instructive and amusing illustration of an attempt to reconcile a decision with alleged precedents is found in a case decided by the interstate commerce commission. In maintaining that the shipper of petroleum in barrels should not be charged for the weight of the barrel, since the shipper in tanks was not charged for the weight of the tank, the commission stoutly protested that it was following its precedents. The contrary had been contended with much vigor by those who opposed this ruling. And on the face of the cases it fully appears that the commission's language, although it was not as clear as it might have been, gave much warrant for this contrary assumption. The commission, after having asserted at many pages' length that its decisions were consistent and that it had followed its own precedents, wound up with the assertion that it was an administrative body and was therefore not obliged to follow precedent when it saw fit to do otherwise.² It would of course arrest the necessary development of law in the new fields in which these tribunals are working if they observed the rule of *stare decisis* in anything like the degree in which it is observed in the ordinary courts.

The fact that the procedure is so largely untechnical and often expeditious, if not summary, conduces to a result which affords one of the best arguments for the maintenance and extension of these tribunals. This is the comparative inexpensiveness to private individuals of proceedings before them. Frequently the expense is borne almost entirely by the government, and the cost to the government is much less than that of prosecutions in criminal courts. The proceedings are often

² Rice, Robinson and Witherop v. W. N. Y. & Penna. R. R. Co., 4 I. C. C. Rep. 131, at 155.

so simple that it is unnecessary to employ an attorney. Attorneys when necessary are frequently supplied by the government. Many tribunals, like the interstate commerce commission, are ambulatory. This makes unnecessary the expense attendant upon the transportation of one's case, so to speak, for a long distance. The argument of inexpensiveness is no doubt sufficiently founded upon fact in the United States to be generally available here. But that an administrative proceeding may be very costly in some places and under certain conditions is fully attested by the history of complaints in the British railway commission court.¹

Qualifications of members.—Of the character of the members of these tribunals not much that is encouraging can be said. The qualifications are seldom technical or specific, except in the case of state boards of health and similar scientific bodies.

- Political service and political influence seem to be the usual credentials. Public opinion as well as the opinion of the bar requires the filling of judicial offices from the legal profession. But this is not true of the administrative tribunals. These offices remain in large measure a contingent fund of place and position from which a chief executive can make discretionary payments in satisfaction of political obligations. And yet the work is often technical—as technical as that of the judge, the scientist or the professional economist. And being technical, it requires for its best performance men trained by education and experience to the special service involved. Public offices fall into two great groups, the professional and the political. The administrative tribunal belongs in the former group.

Conclusions.—In the foregoing pages an effort has been made to show that the administrative tribunal is something quite different from the judicial court; that its processes are typical; and that its powers are often so great that studied neglect of it is fatuous and continued ignorance of it dangerous.

It is probable that the use of the administrative tribunal will increase in the United States. Many judges seem to demand it;

¹ S. J. McLean, "The English Railway and Canal Commission of 1888," in *The Quarterly Journal of Economics*, vol. xx, pp. 38—40.

public opinion has frequently called for it; and there are arising in our public life numerous problems so peculiarly technical as to demand for their solution the creation of special administrative boards of experts.¹ Something more is necessary than the spasmodic pulling and hauling with which from time to time legislatures have tried to meet this need.

In the present structure of the administrative tribunal there is a lack of careful articulation. The administrative tribunal is too often a makeshift, its competence conjectural and the law upon which it is based a mere agglomeration of details. Even in those cases in which the tribunal has been constructed with exceptional care there is usually some conspicuous defect. It is hard to establish a body of this kind which shall be perfect in its details when the basis upon which it rests is shifting and unknown. Mr. W. M. Ackworth described the British railway commission court in his recent testimony before the Senate committee on interstate commerce. He stated that its chairman, who must be a judge of the high court, decides all questions of law. Senator Cullom asked the following question: "And in all law questions his decision is final? Did I understand you to say that?" Mr. Ackworth replied: "It acts a little peculiarly, sir, in all cases that, in the opinion of the commission, are questions of law; and the commission may, perhaps, go wrong on the fact of what are questions of law."² Such are the vicissitudes that attend the severance of the judicial and administrative courts. And yet the English railway commission court is perhaps one of the best administrative tribunals to be found in Anglo-Saxon countries.

The powers of the administrative tribunal are too frequently a matter of speculation. They should be carefully defined. The authority which the administration possesses over its own processes has frequently resulted in an admirable simplicity. But this highly flexible procedure none the less has the defects of its qualities. Let it be simple, but let it be an orderly sim-

¹ Hearings on Railroad Rates, by the Senate Committee on Interstate Commerce (1905), pp. 1846, 1847.

² Cf. S. P. Orth, "Special Legislation," in the *Atlantic Monthly*, January, 1906 p. 73.

plicity. Let certainty and security be introduced, and its case will be far stronger than it is at present. May it not be anticipated that, whatever substantial powers Congress may have conferred upon the interstate commerce commission, much of the work will have to be done over because of a failure to perfect the administrative detail, especially at those points where the functions of the commission approach those of the legislative or of the judicial department?

The attempt which is sometimes made to decry administrative law as an importation, an exotic, as *droit administratif*, is fatuous. We have it all about us; we have had it from our beginning as colonies of England; we have retained and developed it as an independent nation. The administrative tribunal is one of the oldest of Anglo-American institutions. The courts of king's bench, common pleas and exchequer sprang from the permanent council of the king, which was made up of administrative officers. These courts were themselves, in one important sense, administrative courts down to the year 1703, when by the Act of Settlement they were given judicial independence. The self-government on which the Anglo-American prides himself owes an incalculable debt to the administrative courts of the justices of the peace as they developed in England. The administrative tribunal in Anglo-Saxon countries is, in brief, so old that it has been forgotten, and so new that its presence is hardly realized. We are a commercial people, and therefore we have cultivated the commercial law, the private law, allowing it to crowd the public law, and especially the administrative law, into dark places. We have paid a great price for this neglect already, and shall pay a greater one if it continues. The administrative tribunal is with us, it has become perhaps indispensable, and it demands and merits the most thoughtful attention.

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JEFFERSON AND THE CONSULAR SERVICE.

IN the organization of the national government Washington and Hamilton undoubtedly performed the chief part.

Historians have given due prominence to this fact, but they have neglected the work done by Jefferson in organizing an important branch of the government, the consular service. To organize, indeed almost to create, a consular service was peculiarly difficult in the years 1790 and 1792, for at that time domestic affairs were very unstable and foreign policies as yet unformed.

What had been done before Jefferson entered upon his task can be briefly stated.¹ As early as 1780 Congress had recognized the need of separating fiscal and commercial from diplomatic affairs by appointing a consul to reside in France. The consul so appointed was William Palfrey, who was to receive a salary of \$1500 a year; and Thomas Barclay was appointed vice-consul at a salary of \$1000. Palfrey, however, was lost with his ship at sea, and was succeeded as consul by Barclay, who thus became the first American consul to reside in Europe.² Barclay had, in fact, the powers of a consul-general. Five years later, on October 28, 1785, Congress adopted the following resolution:

Whereas it is expedient that consuls should be appointed in the different states with which the citizens of the United States are engaged in commerce; therefore, resolved, that the ministers plenipotentiary of the United States in Europe, and where there is no minister the chargé d'affaires, shall exercise the powers of a consul-general for the kingdoms or states in which they respectively reside, provided that no additional salary be allowed for such service.³

In spite of the advice of Franklin and Adams, who spoke from

¹ On this see E. R. Johnson: *POLITICAL SCIENCE QUARTERLY*, vol. xiii. pp. 19-40.

² It is a coincidence that the name of the first British consul to the United States was Thomas Barclay.

³ *Journals of Congress*, vol. x.

their experience as diplomatic agents, Congress thus made the mistake of continuing to impose consular duties upon the diplomatic branch of the administration. It is much to be regretted that this Congress, which was to pass the remarkable ordinance of 1787, did not lay the foundation of a consular system worthy to be maintained and developed. A strong, independent consular service would have been of great value at this time in restoring trade, and later it would have prevented many misfortunes that befell our commerce.

In 1785 Thomas Jefferson became minister of the United States to France. By article 29 of the treaty of commerce of 1778 between the two countries, mutual liberty to appoint consular officers was secured to the contracting parties, and it was stipulated that the functions of such officers should be regulated by a "particular agreement." Such an agreement was eventually brought about when, on November 14, 1788, after long and wearisome delays, Jefferson concluded a convention to define and establish "the functions and privileges of consuls and vice-consuls." This was his first achievement for the consular service. A few months later a new government took charge of the affairs of the United States. President Washington referred the consular convention to the Senate, and that body on July 29, 1789, approved it unanimously.

By the ratification of this convention, the government under the constitution not only recognized the existence of a consular service but adopted it as a part of the new administrative system. From that time to the present the consular service has been under the direct supervision of the department of state. No man, perhaps, was better qualified by experience and knowledge to take up the organization and regulation of that service than Thomas Jefferson, the newly appointed secretary of state. He knew thoroughly the needs of our country, and his five years of residence in France had given him an opportunity to become familiar with conditions in Europe. Whatever of merit or of evil is inherent in our consular system must be attributed largely to Jefferson; for he, more than any other, was its creator and organizer. Not only did he conclude the consular convention with France, but, as the first secretary of state of the United

States, he had the whole consular service for four years under his direction. The customs and precedents originating in these first years of the new government have been most potent and most lasting. Finally, it was through his influence and in accordance with his advice that the important act of 1792 was passed.

Jefferson was still in Europe when appointed secretary of state, and he did not enter upon the duties of his new office until March 22, 1790. On June 15 eight persons were informed by letter from the secretary of state of their appointment to consular office. The first letter of Thomas Jefferson to a consul of the United States was as follows:

NEW YORK, JUNE 15, 1790.

John Marsden Pintard, Esq.

*Sir: The President of the United States desiring to avail the public
of your services as consul for the Island of Madeira, I have the honor
of enclosing you the commission and of expressing to you the senti-
ments of perfect esteem with which I am, Sir,*

Your most obedient and humble servant,

[Signed] Thomas Jefferson.¹

Similar letters were sent to the other appointees. In the latter part of August, 1790, the letters show that sixteen consular officers—six consuls and ten vice-consuls—had been appointed for six different foreign lands. By the first of January, 1795, the number of consular representatives of the United States had increased to forty in twelve different foreign countries: five consuls-general (ministers acting in this capacity), twenty-five consuls, eight vice-consuls and two commercial agents.²

¹ American Letters, vol. i, June 15, 1790, State Department MSS.

² They were placed in the various countries as follows:

To the republic of France and dependencies: consul-general (minister), James Monroe; consuls, three; vice-consuls, three. To the kingdom of Great Britain: consul-general (minister), Thomas Pinckney; consuls, six; vice-consul, one; commercial agent, one. To the kingdom of Spain: consul-general (minister), William Short; consuls, four. To the kingdom of Portugal and its dominions: consul-general (minister), David Humphreys; consuls, two; vice-consul, one. To the United Netherlands and their dominions: consul-general (minister), J. Q. Adams; consul, one; vice-consuls, three; agent, one. To Denmark and the Hanse Towns: two

On July 1, 1790, Congress had passed a law entitled: "An act providing the means of intercourse between the United States and foreign nations."¹ This act made no mention of the duties, salaries or emoluments of consuls, probably for the reason that a separate bill was being prepared for that purpose.² As regards the payment of consuls two distinct policies had been followed. The first consul of 1780, it will be remembered, was to receive a salary of \$1500. The resolution of Congress in 1785 did away entirely with consular salaries, but permitted the consuls to engage in trade, as many of them actually did. It was a custom long followed but never satisfactory either to the consuls or to the government. The ministers to the foreign courts were acting as consuls-general, but, as expressly stated by the resolution of 1785, without additional pay. It was certainly a very economical basis on which the consular service was being conducted. There was no salary nor were there any fees or emoluments attached to the office of consul. The need of economy at that time was very great. The new government was just being established, commerce was burdened with restrictions, and it was very uncertain how much revenue would be derived from imports. In these facts is found the excuse for the apparently parsimonious treatment by Congress of our consular officers.

Soon after their appointment in the summer of 1790, the consuls to each. To Germany, Italy, Morocco, China and East Indies: one consul to each.

The above list is made out from a list given in the United States Register for 1795, of which there is a copy in the Library of Congress. In the same year (1795) there were in the United States twenty-five consular representatives from six foreign countries: five consuls-general, eleven consuls and nine vice-consuls.

¹ Statutes at Large of the United States, vol. i, p. 128. Inasmuch as this law of 1790 authorized the president to draw from the United States treasury a sum of money not exceeding \$40,000 annually "for the support of such persons as he shall commission to serve the United States in foreign parts" some persons have supposed that it was intended to include the consular service. Professor E. R. Johnson (in POLITICAL SCIENCE QUARTERLY, vol. xiii, p. 39) says: "A part of the money thus placed at the disposal of the president might have been used in paying salaries of consuls, but none was so applied."

² See Jefferson's instructions, *infra*, p. 630; also Jefferson's letter to J. Johnson, *infra*, p. 632.

suls went to their posts of duty, and by the end of the year letters from them began to be received by the secretary of state.

The earliest instructions to the consular body were sent by Jefferson on August 26, 1790. As they contain an explanation of many of the duties of consuls and also Jefferson's ideas as to the personnel of the service, they are here given in full.

CIRCULAR TO THE CONSULS AND VICE-CONSULS OF THE UNITED STATES.¹

NEW YORK, AUGUST 26, 1790.

Sir: I expected, ere this, to have been able to send you an act of Congress, prescribing some special duties and regulations for the exercise of the consular offices of the United States; but Congress not being able to mature the act sufficiently, it lies over to the next session. In the meanwhile, I beg leave to draw your attention to some matters of information, which it is interesting to receive.

I must beg the favor of you to communicate to me, every six months, a report of the vessels of the United States which enter at the ports of your district, specifying the name and burthen of each vessel, of what description she is (to wit, ship, snow, brig, etc.), the names of the masters and owners and number of seamen, the part of the United States from which she cleared and places touched at, her cargo outward and inward and the owners thereof, the port to which she is bound and times of arrival and departure; the whole arranged in a table under different columns and the reports closing on the last days of June and December.

We wish you to use your endeavors that no vessel enter as an American in the ports of your district, which shall not be truly such, and that none be sold under that name, which are not really of the United States.

That you give to me, from time to time, information of all military preparations and other indications of war which may take place in your ports; and when a war shall appear imminent, that you notify thereof the merchants and vessels of the United States within your district, that they may be duly on their guard; and, in general, that you communicate to me such political and commercial intelligence as you may think interesting to the United States.

The consuls and vice-consuls of the United States are free to wear the uniform of their navy if they choose to do so. This is a deep blue coat with red facings, linings and cuffs, its cuffs slashed and a standing collar; a red waistcoat (laced or not at the selection of the wearer)

¹ State Department, Foreign Letters, p. 399.

and blue breeches; yellow buttons with a foul anchor, and black cockades and small swords.

Be pleased to observe that the vice-consul of one district is not at all subordinate to the consul of another. They are equally independent of each other.

The ground of distinction between these two officers is this: our government thinks that to whatever there may be either of honor or profit resulting from the consular office native citizens are first entitled, when such, of proper character, will undertake the duties; but where none such offer, a vice-consul is appointed of any other nation.

Should a proper native come forward at any future time, he will be named consul; but this nomination will not revoke the commission of vice-consul; it will only suspend his functions during the continuance of the consul within the limits of his jurisdiction, and on his departure therefrom it is meant that the vice-consular authority shall revive of course, without the necessity of a reappointment.

It is understood that consuls and vice-consuls have authority of course to appoint their own agents in the several parts of their district, and that it is with themselves alone that those agents are to correspond.

It will be best not to fatigue the government in which you reside, or those in authority under it, with applications in unimportant cases. Husband their good dispositions for occasions of some moment, and let all representations to them be concluded in the most temperate and friendly terms, never indulging in any case whatever a single expression that may irritate.

I have the honor to be, Sir, your most obedient and most humble servant.

Thomas Jefferson.

These instructions settled some questions that had already arisen, and they proved an invaluable guide to the consuls in their work, wherein few or no precedents had as yet been established. The circular did not define the jurisdiction of consuls, but later circulars and letters supplied the lack.

Of the occasional letters sent out from the department of state to the consuls, giving them more detailed instructions for the work in their particular field, the following is a good example. It is a letter¹ from Jefferson to Joshua Johnson, consul

¹ Never before published. It is dated at New York, Aug. 7, 1790, and is recorded in MS. American Letters, vol. i.

for London, in which the secretary explains at some length the nature of the consul's work.

Sir: The president of the United States, desirous of availing his country of the talents of its best citizens in their respective lines, has thought proper to nominate you consul for the United States at the port of London. The extent of our commercial and political connections with that country marks the importance of the trust he confides to you, and the more as we have no diplomatic character at that court. I shall write more to you in a future letter on the extent of the consular functions, which are in general to be confined to the superintendence and patronage of commerce and navigation, but in your position we must desire somewhat more. Political intelligence from that country is interesting to us in a high degree; we must therefore ask you to furnish us with this as far as you shall be able; to send us moreover the gazette of the court, Woodfall's parliamentary register; to serve sometimes as a center of correspondence with other parts of Europe, by receiving and forwarding letters sent to your care. It is desirable that we be annually informed of the extent to which the British fisheries are carried on within each year, stating the number and tonnage of the vessels and the number of men employed in the respective fisheries; to wit, the northern and southern whale fisheries and the cod fishery. I have as yet no statement of them for the year 1789, with which therefore I beg you to begin. While the press of the seamen continues, our seamen in ports nearer to you than to Liverpool (where Mr. Maury is consul) will need your protection. The liberation of those impressed should be desired of the proper authority with due firmness, yet always in temperate and respectful terms, in which way indeed all applications to government should be made.

The public papers herein desired may come regularly once a month by the British packet, intermediately by any vessels bound directly either to New York or to Philadelphia. All expenses incurred for papers and postages shall be paid at such intervals as you choose, either here on your order or by bill on London whenever you transmit to me an account.

There was a bill brought into the legislature for the establishment of some regulations in the consular office, but it is postponed to the next session. That bill proposed some particular fees for some particular services; they were however so small as to be no object. As there will be little or no legal emolument annexed to the office of consul, it is of course not expected that it shall render any expense incumbent on him.

I have the honor to be, with great esteem, Sir, . . .

Thomas Jefferson.

From the above letter it is evident that the work of a consul was not to be easy. Men of learning, tact and business ability were needed in the consular service then as they are now. It was well for Jefferson thus early to advise patience and politeness, for the question of the impressment of American seamen, to which he refers, was one of the most vexatious with which our consuls had to deal, and their correspondence is full of it from this time until the war of 1812.

In this first year of the new consular service a question arose with France in regard to the right of the United States to appoint consuls to the French colonies. The answer involved the interpretation of the clause of the consular convention. On such a question no one could speak with greater authority than Jefferson, by whom the convention was negotiated. In a letter to William Short, in July, 1790, Jefferson mentions that M. de la Forest, French consul at New York, had remarked the appointment of consuls to the French islands. Jefferson then explains to Minister Short the terms employed in the convention and what the understanding was at the time the convention was framed. He says:

The words "états du roi" unquestionably extended to all his dominions. If they had been merely synonomous with "la France" why was the alteration made? When I proposed the alteration I explained my reasons, and it cannot be supposed I would offer a change of language but for some matter of substance.

A few months later the French government questioned the right of the United States to appoint consuls in the French colonies, and once more Jefferson wrote to William Short and declared that the right of the United States was clear. He insisted on this as a "reservation of our right, and not with a view to exercising it, if it shall be inconvenient or disagreeable to the government of France." Only two officers had been appointed to the French colonies—Mr. Skipwith to Martinique and Guadalupe, Mr. Bourne to St. Domingo—and they were now instructed not to request a regular *exequatur*, and the hope was expressed that the French government would show them such attentions as the patronage of commerce might call for.

As regards Great Britain, with which the United States had no consular convention, nor even a treaty of commerce, the position of the American government was entirely different. Two years later, in a letter to Mr. Coxe, Jefferson indicated the situation as it then stood.

With respect to the placing of consuls in the British Islands, we are so far from being permitted that, that a common mercantile factor is not permitted by their laws. The experiment of establishing consuls in the colonies of the European nations has been going on for some time, but as yet we cannot say it has been formally and fully admitted by any. The French colonial authority has received them, but they have never yet been confirmed by the national authority.¹

On May 13, 1791, Jefferson sent out his second circular:

TO THE CONSULS AND VICE-CONSULS OF THE UNITED STATES.²

Sir: You will readily conceive that the union of domestic with the foreign affairs under the department of state brings on the head of this department such incessant calls, not admitting delay, as oblige him to postpone whatever will bear postponing; hence, tho' it is important that I should continue to receive from time to time regular information from you of whatever occurs within your notice interesting to the United States, yet it is not within my power to acknowledge the receipt of your letters regularly as they come. I mention these circumstances that you may ascribe the delay of acknowledgement to the real cause, that it may not produce any relaxation on your part in making all these communications which it is important should be received, and which govern our proceedings tho' it is not in my power to note it to you specially.

I had hoped that Congress at their last session would have passed a bill for regulating the functions of consuls. Such a one was before them, but there being a considerable difference of opinion as to some of its parts, it has been finally lost by the shortness of the session which the constitution has limited to the third of March. It will be taken up again at the ensuing session of October next; and in the meantime you will be pleased to govern yourself by the instructions already given.

In general our affairs are proceeding in a train of unparalleled prosperity. This arises from the real improvements of our government,

¹ Jefferson's Works, vol. iv, p. 69. It seemed, in fact, to make no difference whether consular conventions existed or not, for the United States had as much trouble with France as with England.

² Never before published. It is recorded in Instructions to Ministers, vol. I.

from the unbounded confidence reposed in it by the people, their zeal to support it and their conviction that a solid union is the best rock of their safety, from the favorable seasons which for some years past have coöperated with a fertile soil and good climate to increase the productions of agriculture, and from the growth of industry, economy and domestic manufactures. So that I believe I may say with truth that there is not a nation under the sun enjoying more present prosperity now with more in prospect.

The unsuccessful issue of the expedition against the savages the last year is not unknown to you. More adequate preparations are making for the present year, and in the meantime some of the tribes have accepted peace and others have expressed a readiness to do the same.

Another plentiful year has been added to those that had preceded it, and the present bids fair to be equally so. A prosperity built on the basis of agriculture is that which is most desirable to us, because to the efforts of labor it adds the efforts of a greater proportion of soil. The check, however, which the commercial regulations of Europe have given to the sale of our produce has produced a very considerable degree of domestic manufacture, which so far as it is of the household kind will doubtless continue, and so far as it is more public will depend on the continuance or discontinuance of the European policy.

I am, with great esteem,

Thomas Jefferson.

For two years, as indicated in the instructions and letters of Jefferson, Congress had been considering the regulation of the consular system; but for various reasons the act had been delayed. Finally on April 14, 1792, such an act was passed.¹ It should be noticed that this act did not, as some have said, create the consular system, but it did to a certain extent define the duties and functions of consuls.

During the years from 1792 down to 1816, when foreign affairs were most troublesome, when precedents were being established and consuls were inexperienced and frequently perplexed, our secretaries of state were kept exceedingly busy in

¹ It was entitled: "An act concerning consuls and vice-consuls for carrying into full effect the convention between the King of the French and the United States of America, entered into for the purpose of defining and establishing the functions and privileges of their respective consuls and vice-consuls." The act may be found in the Journals of Congress, vol. iii, p. 1360, and in Statutes at Large, vol. i, p. 254.

giving advice and sending instructions. That the task became a heavy burden for Jefferson is made plain by the opening sentences of the instructions of May 13, 1791, quoted above.

Soon after the adjournment of Congress in 1792 Jefferson sent out his third set of instructions to the consuls and vice-consuls and forwarded to them also a copy of the law of Congress passed during the previous month. Besides some general instructions in regard to the duties of their office, Jefferson wrote of the public credit and the continued prosperity of the country. Two more circulars of general instructions were sent out by him before he retired from the office of secretary of state, Dec. 31, 1793. One of these circulars, dated November 14, 1792, directs the consuls to address their letters in future to the secretary of state, by title and not by name, as he intends to resign. The other circular, on March 21, 1793, calls the attention of the consuls to the appearances of war in Europe and desires them, on the first symptoms of rupture among the maritime powers, to put our vessels on their guard, to secure to them the rights of neutrality and to protect them against all invasions of such rights.

The consular service as developed by Jefferson was organized to put it as concisely as possible, as follows: Only native citizens of the United States were appointed consuls. In ports where consular officers were needed a foreigner was appointed vice-consul if no deserving native was to be found there. A vice-consul of one port and its vicinity had no dependence on the consul of another; each acted independently in his department, which extended to all places within the same allegiance that were nearer to him than to any other consul or vice-consul; each could appoint agents within his department who were to correspond with himself. In France in 1791 there were three consuls for the United States (natives) and two vice-consuls (Frenchmen). In England there were three consuls for the United States (natives) and one vice-consul (foreigner). In Ireland there was one consul for the United States (native).

It was Jefferson's settled policy to appoint foreigners to the consular offices only when deserving natives could not be found. In his letter to Jay in 1788 accompanying the consular conven-

tion, Jefferson had said: "Native citizens, on several valuable accounts, are preferable to aliens and to citizens alien born." His reasons for so thinking are clearly indicated in two of his letters. In a letter to the vice-consul at Havre, M. de la Motte, he said:

I am sensible of the difficulties to which our consuls are exposed by the applications of sailors calling themselves American. Though the difference of dialect between the Irish and Scotch and Americans is sensible to the ear of the native, it is not to that of a foreigner, however well he understands the language, and between the American and English (unless of particular provinces) there is no difference, sensible even to a native. Among hundreds of applications made to me at Paris, nine-tenths were Irish, whom I readily discovered, the residue I think were English, and, I believe, not a single instance of a Scotchman or American. The sobriety and earnestness of the two last keep them from want. You will find it necessary to be extremely on your guard against these applications.¹

Twenty-five years later, on February 4, 1816, Jefferson wrote again on this subject of appointing foreigners to office and in particular concerning M. de la Motte:

On the question of giving to de la Motte the consulship of Havre I know the obstacle of the Senate. Their determination to appoint natives only is generally proper, but not always. These places are for the most part of little consequence to the public, and if they can be made resources of profit to our ex-military worthies they are so far advantageous. You or I however know that one of these new novices [*sic*], knowing nothing of the laws or authorities of his port, nor speaking a word of its language, is of no more account than the fifth wheel of a coach.²

It is evident that the thought uppermost in Jefferson's mind was the good of the service. The best men available should be appointed. Nearly all of the secretaries of state since his time have advocated the same system—the merit system—but unfortunately, after a hundred years and many attempts at reform, it is not yet established.

¹ Never before published. It is to be found in Instructions to Ministers, vol. i.

² Jefferson's Works, vol. vi, p. 552.

Consular officers, with the exception of the first consul and vice-consul, received no salary, fees or emoluments. They were of course allowed to engage in trade. This lack of salary distressed Jefferson very much; and it was largely through his efforts that the law of 1792 provided for certain consular fees. Economy at that time demanded such a system; but there is no sufficient excuse for its maintenance to the present time.

Some of those early consular officers, possibly all of them, were able and faithful in the performance of duty. Thomas Barclay, first consul of the United States in Europe, also a diplomatist, performed a long service and was highly esteemed by his government. Stephen Cathalan was consul and vice-consul for twenty-six years and performed the work for nearly forty. He spoke English and French fluently, and according to Jefferson's testimony performed his duties well. Sylvanus Bourne was in consular work twenty-six years, seventeen or more of which were spent at Amsterdam. Bourne's last letter to his government, dated June 5, 1817, reveals very unsatisfactory conditions in the consular service. He writes, in a trembling hand, that he still has confidence that Congress will make a more proper and equitable provision for the compensation of our consuls abroad.

As it is at present [he declares] their situation is dishonorable to their country and peculiarly degrading to the men themselves. A correct statement of their suffering and privation could not fail to excite fitting sentiments of the justice due to them.¹

A few weeks later Bourne died in extreme poverty at Amsterdam.

The consular system, if system it can properly be called, was fully established in 1792. It had been developed by Jefferson along the lines indicated by him in his letter to Jay, accompanying the consular convention of 1788. It was not satisfactory to Jefferson, but it was the best obtainable at the time. That some of its defects were continued and others introduced was the fault of others and of later times.

BURT E. POWELL.

WILMETTE, ILLINOIS.

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¹This letter is to be found in the Consular Dispatches.

CONSTITUTIONAL THEORIES IN FRANCE IN THE SEVENTEENTH AND EIGHTEENTH CENTURIES

ONE who goes through the records of French history finds, upon coming to the revolutionary era, certain elaborate, written constitutions. The very swiftness with which one document succeeds another would seem to be *prima facie* evidence of their inadequacy; they may, indeed, be regarded as the prospectuses rather than the bases of government; but putting aside all questions of intrinsic worth, as judged by the later developments of political science, there is no escape from the conclusion that these constitutional phenomena were at the time of vast significance, and we cannot withhold our wonder at the apparent unexpectedness of their appearance upon the scene of French political life.

Whence come these documents which seek to enthrone system in the place of chaos? Are they the result of a fortunate inspiration vouchsafed in the nick of time to rescue France as she totters between the gulfs of despotism and anarchy? Are they a special, unaccountable gift of political insight? Are they efforts to solve a problem which France had never attempted to solve or even formulate before? Are they the first clamorous expression by French publicists of the need for greater order and stability in the administration of government? No, they are none of these. They are simply stages in the realization that something was wrong with the French machinery of state, and in the process of that realization they are by no means the first stages. So the suddenness and spontaneity of the revolutionary constitutions is only apparent and not real.

Indeed the correspondence and memoirs and treatises of French thinkers for two hundred years before the overthrow of '89 are replete with complaints in regard to the old régime and suggestions for remedying its irregularities and injustice. Whether France had a constitution was a question asked and answered countless times; and, naturally enough, the answers

were largely determined by personal or corporate interest and predilection. To describe the growth of the idea of a constitution, it will be profitable to quote the views of men who may be presumed to have had some influence in shaping public thought, though the exact measure of that influence it will be beyond our power to estimate. To appreciate the difficulty with which the idea took form we must have some notion of the dead weights and the active energies which impeded or opposed its development.

On March 6, 1648, a deputation from the Parliament of Paris visited the queen regent and replied as follows to her request that the parliament define its authority and limit its jurisdiction:

For the members of parliament to resolve what are the extreme limits of their power would be to enter into controversy with their sovereign. Pardon us, Madame, if, in order to keep within the bounds of respect, we fail in obedience. The members of parliament confess that they cannot and ought not to decide a question of this nature, for, in order to do so, it would be necessary to break open the seals of royalty and penetrate into the secrecy and majestic mystery of the empire. Be gracious enough to pardon, Madame, this refusal to deliberate upon the most important and difficult question of government, the determination of the legitimate measure, extent and competence of the various powers.¹

Lest it be thought that the parliament's reluctance was actuated by unselfishness and modesty, I may be permitted to quote the sentiments of the same parliament in the year 1732:

The full and entire liberty of acting according to the exigencies of time and circumstance constitutes all the force, sometimes all the importance, of our decisions. Everything which might tend to tie the hands of your parliament and to restrain that indefinite liberty which it has always enjoyed in the administration of justice, would appear at once new and difficult if not impossible of execution.²

Something of the same spirit is manifest in the remonstrances of the Parliament of Provence in February, 1771. In this case

¹ Mémoires de Talon, Mémoires relatifs à l'histoire de France (Paris, 1857), vol. xxx, p. 217.

² Flammermont, Remontrances du Parlement de Paris, vol. i, p. 282.

it is a question of establishing the bounds between monarchy and despotism, and the parliament declares that "to remove the sacred veil which conceals the limits of authority is to inspire distrust and start a dangerous agitation."¹ Here the argument for uncertainty and absence of definition is advanced in the interest of domestic peace; on another occasion the same argument is used in the interest of safety from outside intervention:

The French government is indefinable, incomprehensible; and it is precisely that which gives it all its force. Unable to descry or estimate the extent of its resources, the enemies of this state cannot inflict upon it serious injury, much less destroy it.²

If we remember that intelligent Frenchmen had always a tendency to lapse into this anti-constitutional frame of mind—a tendency thus to worship indefiniteness and mystery—we shall better appraise the difficulty of introducing into France a well-ordered government.

As it is my purpose later to adduce evidence of a constitutional concept actually existent before the Revolution, it is only fair to admit at the beginning how little the concept had been able outwardly to accomplish, and in what an apparently serious predicament France found herself as she approached the end of the old régime. In March, 1789, Séguier declared:

The present situation of France is like that of a numerous fleet buffeted by a tempest, unable to use the signals agreed upon; the vessels, beaten about by opposing winds, obey the foaming wave, collide, separate and meet again.³

The Baron de Besenval thus describes the pre-revolutionary anarchy:

The general spirit of revolt, the conflict of diverse interests, had at

¹ *Recueil de remontrances des parlements* (Paris, 1775), vol. ii, p. 487. Bib. Nat. Lb. 38, 1256.

² Chaillon de Jonville, *Apologie de la constitution française, ou États républicains et monarchiques comparés dans les histoires de Rome et de France* (1789), vol. i, p. 143. Bib. Nat. Lb. 39, 1272.

³ Speech of Séguier in the Parliament of Paris on March 17, 1789. *Journal général de France*, 1789, p. 131.

last produced a ridiculous caricature of civil war, which, without chiefs, without poignards, without poison, without the shedding of blood, nevertheless had all the evils attendant upon intestine strife.¹

Mounier, with his accustomed clearness, sums up the situation as follows:

France alone, perhaps, presented the extraordinary spectacle of two authorities, alternately victorious and subdued, concluding truces but never definitive treaties and, in the shock and impact of their pretensions, dictating contrary mandates to the people. These two authorities were that of the king and that of the parliaments or superior tribunals.²

Linguet, the erratic journalist and advocate, in 1777 lends his facile pen to the portrayal of the conflict of powers.

In France . . . the monarch calls himself the nation; the parliaments call themselves the nation; the nobility calls itself the nation; it is only the nation itself that is not permitted to say what it is or even to give evidence that it exists. While we wait for the situation to be clarified, all is confusion; everything serves as a basis for claims and as matter for dispute. The royal authority, incessantly advancing or receding, knows no bounds which it dares not cross and no limits behind which it cannot be forced to retreat.³

In his history of the decline of the French monarchy, Soulavie remarks:

Of this struggle between the claims of military force and the claims of the parliaments was born a government which I will not call a free government (in which the powers are divided, defined, classified and established . . . as in England), but there was born this *gouvernement hermaphrodite* . . . which now crushed the revolutionary opposition of the parliaments by a *coup d'état*, and the following year submitted to the spirit and terms of the parliaments' representations.⁴

¹ Mémoires du Baron de Besenval (Paris, 1821), vol. ii, p. 306.

² Recherches sur les causes qui ont empêché les Français de devenir libres, et sur les moyens qui leur restent pour acquérir la liberté (Geneva, 1792), vol. i, p. 11. Bib. Nat. Lb. 39, 5705.

³ Linguet, Annales, vol. i, p. 17.

⁴ Histoire de la décadence de la monarchie française (Paris, 1803), vol. i, p. 238. Bib. Nat. La. 29, 10.

An English observer writing in 1769 is sure the French monarchy is absolute, and thinks he discerns the cause.

Such a system of government could scarcely be framed for any purpose but to render arbitrary power wonderfully secure. It effectually deceives the people ; for to their minds, so infatuated with the magnitude of their idea of the *grand monarque*, such resolute opposition as his edicts sometimes meet with in parliament amazes them and gives them a notion of liberty, which renders the truth less apparent. It is incredible what numbers of Frenchmen will insist violently that their king is far from being absolute—that they are a free people—and that the legislative power resides not in the king, but jointly with his parliament.¹

At the outbreak of the Revolution a French writer expressed substantially the same view as to the ineffectiveness of the parliaments :

The parliaments, attached to antiquated forms, did sometimes make good their opposition ; but they were easy to overcome by negotiation and by offering advantageous terms to those members who had the most influence. Ignorance of the affairs of state characterized these great bodies, and it was easy for an adroit minister to present matters to them under a favorable aspect ; their remonstrances were often agreed upon with the court and replied to in advance, and the most eloquent protests were become but commonplaces.²

These contemporary opinions, it must be confessed, go to indicate not merely that France had no constitution, but that the French had no clear idea of a constitution. It must however be borne in mind that the outward and apparent *status quo* is not always indicative of the real advance made by ideas.

It is manifest that the first step toward establishing constitutionalism is to destroy the claim to absolute, arbitrary power. We find very early and very positive utterances by Frenchmen to the effect that the royal authority is limited ; that France is a monarchy but not a despotism. There was most emphatic op-

¹ Letters concerning the Present State of the French Nation (London, 1769), p. 142. Bib. Nat. Lb. 38, 1563.

² Gabriel Sénac de Meilhan, Des principes et des causes de la Révolution en France (London, 1790), p. 35.

position to the doctrine that the monarch's far-sightedness and perception of his own interest as bound up with that of his subjects would operate to keep him within just limits; such a self-imposed restraint is characterized as a *sauve-garde trompeuse*.¹ A limit, which perhaps was hardly less fictitious, was found in divine law and precept. Frenchmen were often ready enough to admit that kings were God's earthly agents, but they demanded that the kings act in harmony with God's laws. Seyssel, an early writer on public law, mentions "religion" as the first of the three restraints upon kingly power.² In July, 1549, Henry II, in an interview with Chancellor Olivier and the first president of the Parliament of Paris, was admonished of his duty and was asked: "Can kings, transcending the common virtues, do anything more lofty, more royal and more divine than to conform themselves to God in the administration of justice?"³ A century later it was asserted that

The necessity of doing well and the inability to fail are the highest degrees of all perfection. God himself, in the opinion of Philo the Jew, cannot do more, and it is this divine impotence which sovereigns, who are God's likenesses upon earth, ought especially to imitate in governing their states.⁴

Bossuet insisted that "the people ought to fear the prince; but the prince ought to fear to do evil."⁵

Out of this restraint imposed by religion was derived the famous doctrine of the "happy inability" (*heureuse impuissance*) of kings, which was used by publicists and parliaments in the manœuvres of opposition down to a very late date.

There are laws which our kings are fortunately incapable of changing

¹ Arrêté du Parlement de Bordeaux du 26 mars 1771, p. 3. Bib. Nat. Lb. 38, 1158. Also Arrêté du Parlement de Rennes du 16 mars 1771, Recueil, vol. ii, p. 289. Bib. Nat. Lb. 38, 1256.

² La grande monarchie de France (1541), pp. 11, 12. Bib. Nat. Le. 4, 1.

³ Archives Nationales, MSS. U933, p. 380.

⁴ Traité des droits de la reyne très-chrétienne sur divers États de la monarchie d'Espagne (Paris, 1667), part ii, p. 191. Bib. Nat. Lb. 37, 3566B.

⁵ Politique tirée des propres paroles de l'Écriture sainte, Oeuvres complètes (éd. Lachat, Paris, 1864), vol. 23, p. 564.

. . . those laws which, taking their rise in eternal justice, impose upon all sovereigns, no matter how extensive their power, the rigorous obligation of respecting legitimate rights, of judging equitably, of not deciding except according to law, of shunning despotism and of consulting, in all acts of government, the interest of the public weal. These laws, dictated by the Author of Nature, are the primitive foundation of all society and are binding upon all authorities, even the most absolute.¹

The men who disputed the king's divine right hesitated to proclaim unreservedly the severance of God's authority from temporal affairs; accordingly they accepted the *vox populi vox Dei* argument. In 1771 a radical writes:

It must not be imagined that the monarch is inferior or submissive to the people over whom he has a right to rule; but he is uncontestedly subject to the will of God, which, in temporal governments, is legitimately manifested by the voice of the people . . . In accordance with the express terms of the consecration of our kings, the right to reign is no other than that of governing according to the will of God; indeed, our monarchs promise to do thus when they swear to rule in harmony with the best advice given in the council of their liegemen.²

In 1771 this was no longer new doctrine, for the people's control over the inauguration and administration of kings had already for generations been insisted upon. In 1717 Massillon, the newly appointed bishop of Clermont, preached a series of sermons before the young king, Louis XV, with wholesome admonitions which that monarch would have done well to heed.

Sire, a magnate, a prince, is not born for himself alone; he owes himself to his subjects. The people, in elevating him, have confided power and authority to his keeping and have reserved for them-

¹ Développement des principes fondamentaux de la monarchie française, par Janon et autres magistrats émigrés (1795), p. 29. Bib. Nat. Le. 4, 106 Réserve.

² Inauguration de Pharamond; ou Exposition des loix fondamentales de la monarchie française, avec les preuves de leur exécution, perpétrées sous les trois races de nos rois. This pamphlet is contained in vol. ii of Les efforts de la liberté et du patriotisme contre le despotisme du Sr. de Maupéou, chancelier de France, ou Recueil des écrits patriotiques publiés pour maintenir l'ancien gouvernement français. London, 1775. Bib. Nat. Lb. 38, 1303.

selves the right to his care, his time, his vigilance. He is not an idol that they have made to worship ; he is a guardian put at their head to protect and defend them. He is not of those useless divinities which have eyes and see not, tongues and speak not, hands and perform not ; he is of those deities who go before the people . . . to conduct them and guard them. It is the people who, by the command of God, have made our sovereigns what they are . . . Yes, Sire, it is the choice of the nation that first placed the scepter in the hands of your ancestors ; it is the nation that lifted them upon the military shield and proclaimed them kings.¹

Out of the theocratic notion of government, and doubtless as a consequence of the theory that the voice of the people was the voice of God, sprang the concepts of *contrat social* and *volonté générale*, which received such extended treatment at the hands of eighteenth century philosophers and publicists. The people, foreseeing the advantage of being ruled by a monarch, choose, by expressing their *volonté générale*, a king. This *volonté générale* remains forever the guide, the norm, of royal action. To the popular will must the king's will conform, before the king's will can be said to be a *volonté légale*.

There was, however, an ambiguity in the term *volonté légale*. Just as French kings, in the natural course of events, had legitimate children and legitimized bastards, so, in the realm of legislation, they had lawful volition and volition made lawful. This distinction was perfectly clear to Frenchmen when they took the trouble to formulate their political ideas ; but for the two concepts they had but a single expression, that of *volonté légale* or its equivalent, *pouvoir légal*, and this poverty of phrase at times led to confusion of thought. The term "lawful volition" connotes a realm of powers and capacities at the complete disposal of the monarch by virtue of constitutional grant and allowance, while the concept "volition made lawful" refers merely to the monarch's right to propose and initiate legislation, subject always to the right of a competent body to veto, to amend or to confirm any such proposed legislation.

¹ Petit carême de Massillon, évêque de Clermont. Paris. Bib. Nat. Inventaire "D" 71092.

Taking up, then, the subject of "lawful volition," and neglecting for the moment the idea of "volition made lawful," we are confronted at the outset by numerous rules for the monarch's guidance. Let it be understood that these rules vary according to the preconceptions and the politics of writers. In the minds of radicals, they are barriers; in the minds of absolute monarchists, they are the generously contributing sources of royal power. It may be not amiss to utter the warning that I shall always incline to quote the radical view, for it is to the extremists all along the line that we are indebted for the development of the constitutional idea in its fullest elaboration.

We may consider, then, the realm of the king's "lawful volition" as the realm of those residuary powers left the monarch after subtracting the laws and principles established for his guidance. These laws and principles are variously named. They are the *lois fondamentales, constitutives, constitutionnelles, primitives, primordiales, essentielles, immuables, permanentes, inébranlables, indestructibles*.

Whence come these "laws"? Their origin is differently described as divine, natural, traditional and reasonable. They are imposed by God, by nature, by custom, by compact and by gratuitous self-limitation on the part of the sovereign. Especially do the opponents of absolutism ascribe to this last method the origin of the *lois fondamentales*. That was a polite ruse to mollify the king and lull him to sleep with the assurance that his predecessors, realizing their human weakness and fallibility, had voluntarily disburdened themselves of their omnipotence and confided large powers to a safer and wiser keeping than their own. The king was credited with upright intentions and an inexhaustible fund of good-will, but he was reminded that his *volonté* was liable to surprise by crafty, unprincipled courtiers, and that out of the goodness of his heart and the fulness of his exchequer he was likely to be led astray. This unflattering ascription of a self-acknowledged fallibility seemed less brutally hostile and offensive than would be any direct assertion of a limit imposed from outside. So we shall expect to find that monarchs frequently took patriotic precautions against themselves and irrevocably deprived themselves of the free exercise of certain im-

portant powers. It is expressly stated that what the king has thus given, the king cannot take back.¹

The *lois fondamentales* as imposed by God and by nature have already been briefly noticed in connection with the restraints imposed upon the monarch by religion. These laws find their best exponent in Bossuet;² but Bossuet was in effect an absolute monarchist,³ and furthermore his intent was "rather to offer counsels or moral teachings than to establish principles or rules of law."⁴

When, in the passages thus far cited, Frenchmen speak of the laws fixed by nature, it is usually Nature capitalized and, by implication, nearly if not quite synonymous with God. But this is misleading, because the ideas associated with nature had the most various applications; nature furnished above all, the sanction for Rousseau's *contrat social*. Especially does Burlamaqui associate the idea of natural fundamental laws with the idea of contract. He considers the *lois fondamentales* in two divisions, the "natural" and the "positive," and places in the former category

the promises, whether express or implied, by which kings upon their accession to the throne bind themselves, even by oath, to govern according to the laws of justice and equity. Accordingly these laws include all the obligations which spring from the original causes of the formation of states.⁵

¹ "Ne concluez pas . . . que si le parlement tient tout du roi, celui qui lui a tout donné peut tout lui ôter." Lettre d'un vrai patriote à M. Créthieu de Lamoignon, garde des sceaux de France, May 20, 1788, p. 6. Bib. Nat. Lb. 39, 558.

² "C'est principalement de ces lois fondamentales qu'il est écrit, qu'en les violant, 'on ébranle tous les fondements de la terre' (Psal. 81, 5), après quoi il ne reste plus que la chute des empires." Bossuet, *op. cit.* p. 500.

³ *Ibid.* 532, 533.

⁴ "[Il] présente plutôt des conseils ou des préceptes de morale, qu'il n'établit des principes ou des règles de droit." J. E. M. Portalis, *De l'usage et de l'abus de l'esprit philosophique durant le xvii^e siècle* (Paris, 1834), vol. ii, p. 213. Ed. 1820, vol. ii, p. 269.

⁵ Cited in Billaud-Varennes, *Despotisme des ministres de France* (Amsterdam, 1789), vol. ii, pp. 25, 26. Bib. Nat. Lb. 39, 1320.

By such degrees does the idea of nature imperceptibly merge into the conception of contract.

The bewildering mass of material upon the subject of the *contrat social* need present no serious obstacle to our research, if we bear in mind that our quest is simply to ascertain the alleged basis and origin of the *lois fondamentales*. Everything which contributes to that end is grist for our mill; all else is chaff.

So early as 1667 we find an assertion which, intrinsically and in the absolute, is so remarkable and, relatively, is so germane, that it merits quotation:

Inasmuch as the fundamental law of the state has established a reciprocal and eternal bond of union between the prince and his descendants on the one part, and the subjects and their descendants on the other, by a sort of contract which provides that the sovereign shall reign and the people shall obey, neither party alone, at its own pleasure, can free itself from so solemn an engagement in which the two parties have bound themselves each to the other to render mutual assistance—the authority to rule representing an obligation quite as strict in its way as the duty to obey.¹

Noteworthy as this statement is, it will be observed that it emphasizes mainly the inability of the monarch legally to cease governing according to the original contract with the people. There is no attempt to elaborate the idea of *lois fondamentales*; in fact, only one such law is insisted upon. The most direct and unequivocal statement that the *lois fondamentales* in general arise from agreement is to be found in Diderot's article on "Loi" in the *Encyclopédie*, where he declares that

the fundamental laws of a state . . . are compacts between the people and that person, or those persons, upon whom the people confer the

¹ "La loy fondamentale de l'État, ayant formé une liaison réciproque et éternelle entre le prince et ses descendants d'une part, et les sujets et leurs descendants de l'autre, par une espèce de contrat qui destine le souverain à régner, et les peuples à obéir, nulle des parties ne peut seule, et quand il lui plait, se délivrer d'un engagement si solennel, dans lequel ils se sont donné les uns aux autres pour s'entr'aider mutuellement: l'autorité de régner n'étant pas moins une servitude en sa manière que la nécessité d'obéir en est une." *Traité des droits de la reyne, etc.*, part i, p. 169.

sovereign power; and these compacts determine the manner in which the government shall be conducted and prescribe limits to the sovereign authority.¹

The same author even goes so far as to say that "the original act of association bears the name of the fundamental laws of the state, for the reason that they constitute the basis of its security and liberty."²

Having now shown that the *lois fondamentales* were said to have originated in God, in nature, in contract and in the sovereign's voluntary grant, it remains for us to consider their origin in tradition and immemorial custom. We are wont to ascribe to the Teutonic peoples, and particularly to the English, a reverence for antiquity as such, and to account for their present status by showing the tenacity with which they have retained things out of sheer conservatism, after the original *raison d'être* has long since disappeared. I am not prepared to assert that the Gallic people are not more prone to innovation than the Teutonic; but this I know, that in casting about for pretexts of opposition to authority and in proposing remedies for despotism French publicists repeatedly said: "Let this be so because it has been so, because it has been consecrated by time and usage." The appeal to precedent was a very strong appeal, and was used with great effect. Indeed, it was from the accumulation of precedents, from the slow accretion of custom and tradi-

¹ "Les lois fondamentales d'un État . . . sont des conventions entre le peuple et celui, ou ceux, à qui il défère la souveraineté: lesquelles conventions règlent la manière dont on doit gouverner, et prescrivent des bornes à l'autorité souveraine." Encyclopédie ou Dictionnaire raisonné, &c. (3^{me} éd., Livourne, 1773), vol. ix, p. 598.

² "L'acte primordial d'association . . . porte le nom de lois fondamentales de l'État, parce qu'elles en constituent la sûreté et la liberté." *Ibid.*—It is interesting to note that sometimes the people were conceived of as having established the monarchy by an agreement among themselves indeed, but not by any contract with the man chosen as monarch. The king thus becomes a mere office-holder, with no irrevocable right to his office. "L'acte par lequel un peuple se soumet à des chefs n'est point un contrat. Ce n'est absolument qu'une commission, un emploi dans lequel, simples officiers du corps politique, les chefs exercent en son nom le pouvoir dont il les a fait dépositaires, et qu'il peut limiter, modifier et reprendre, quand il lui plaît; l'aliénation d'un tel droit étant incompatible avec la nature du contrat social, et contraire au but de l'association." L'Ami des Loix (1771), p. 7. Bib. Nat. Lb. 38, 1071.

tion, that the fundamental laws drew their origin and their force.¹ As the English common law is a residuary quintessence of countless decisions of the judicial courts, so in old France the fundamental and the quasi-fundamental maxims of government and administration were the resultant of a mass of royal ordinances, in the making and promulgation of which the parliaments had had sometimes an advising, sometimes a deciding voice.

It is evident that if the basis of French government was imbedded in and composed of the multifarious acts of legislation which had gone before, it was necessary to have some means of determining at any given moment the actual status of this ever-developing constitution. It is precisely this need which the French parliaments, Parisian and provincial, attempted to satisfy. These bodies, offshoots of the old *curia regis* and intended by the monarch to perform chiefly judicial duties, were permitted nevertheless to register royal edicts. That was the king's way of getting his legislative will before the people. The ceremony of registering was at first but a simple, secretarial performance, but in time it made the parliament a powerful engine of administration and also the final resting place of the laws. Holding in its possession the records of untold edicts and ordinances, the parliament by degrees assumed the position of the watch-dog of legislation, and arrogated to itself the right to oppose and veto new laws which it might see fit to declare not in harmony with the French constitution. In the bitter conflicts over proposed enactments, the king, with the ever imminent menace of armed soldiery and the more insidious menace of *lettres de cachet*, was able in the last instance to compel outward

¹ Lepaige, in the course of his argument for such constitutional limitations as the parliaments tried to establish, discusses the *lois fondamentales*. He has just described the origin of the Salic law, and continues: "Presque toutes nos autres loix fondamentales sont dans le même cas; également établies sur une tradition, qui remonte à l'origine même de la monarchie, et dont nous ne trouvons les premiers vestiges que dans Tacite" (!) . . . Again, in his effort to render undoubted the antiquity of the *lois*, he declares that "les différens peuples Germains, en s'établissant dans les pays qu'ils occupent aujourd'hui, y portèrent les loix fondamentales de leur État." Lettres historiques sur les fonctions essentielles du parlement, sur le droit des pairs, et sur les loix fondamentales du royaume (Amsterdam, 1753-54), pp. 11, 12. Bib. Nat. Ld. 4, 2563.

obedience to the royal will. But in the struggle to establish well-grounded legal justification for its claims, the parliament had nearly always the advantage, because of its jealous guardianship of the records of the past.¹

Composed, like the other parliaments, of trained advocates, the Parliament of Paris made the registered laws of centuries support each pretension it put forth. Keen to detect an unwary admission of royal *impuissance*, unscrupulous in the distortion of phrases, adept in the juxtaposition of originally unrelated utterances, this body for generations mangled and remade the legislation of the past to suit itself.² To its skilful manipulation of what would seem to be unpromising material is due the plausibility of the remonstrances which it was allowed to make prior to registering new laws. These remonstrances, seemingly founded on justice and uttered in tones of candor and of righteous indignation, printed and spread broadcast over the land from every one of the thirteen parliaments as a distributing center, had incalculable influence in acquainting the intelligent

¹ It may be thought that the crown would have equal opportunity with the parliament for access to the records of legislation, could successfully refute the latter's citations and thus destroy the incipient, tentative constitution. Reasonable as that supposition appears, it is not sustained by the facts. The predicament of the crown cannot be better described than in the words of Moreau in his *Mémoire sur la formation d'un cabinet de législation au contrôle général des finances*, mai, 1759: "Dans les différentes contestations qui, depuis plusieurs années, ont importuné l'autorité du royaume et troublé la paix intérieure qu'il voulait maintenir, on ne s'est apperçus que trop souvent de la disette où l'on était à la cour, et de bons recueils de loix et de gens qui prissent la peine de les feuilleter. Les compagnies (parlements) se fondaient sur celles qui paraissaient appuyer leurs prétentions, et, faute de connaître aussi bien qu'elles les sources où elles puisaient, on restait souvent embarrassé de la réponse, et l'on n'apercevait pas celles que les monuments de notre législation auraient pu fournir au ministère. Cet avantage que les compagnies se sont procuré par de profondes études, dont elles ont abusé quelquefois, les a enhardies. Leurs prétentions ou n'auraient point éclaté, ou se seraient renfermées dans de justes bornes, si ces corps eussent senti que la cour avait autant de connaissances qu'eux." Le comité des travaux historiques et scientifiques, vol. 73, part 1, p. 3.—Moreau repeats his contention in 1762 (*ibid.* p. 47) and in 1764 (*ibid.* p. 83).

² The indictment which is here brought against the Parliament of Paris will find its justification in a perusal of the three volumes of the remonstrances of this parliament during the reigns of Louis XV and Louis XVI, published by Professor Flammermont. An examination of the protests made by the provincial parliaments simply reinforces the impression made by Flammermont's collection.

and, above all, the numerous legal class with the available grounds and pretexts for opposition to royalty.

The opposition was always accompanied by an appeal to the French constitution, and the constitution at any given time was the patch-work product which the parliament saw fit to make it. Nevertheless, despite the frequent inconsistency of its claims, the parliament found it advantageous in the main to urge continually the same limitations on the crown, and in consequence there grew up a pretty definite scheme of fundamental law. The importance of this usurped and often ill-maintained prerogative of interpreting the constitution cannot be overestimated. Unrecognized by the king, the claim was sanctioned by the people, and the parliament at times took on the aspect of a national body, in some measure representative of the people.¹

Let us now examine some of the most generally recognized of the alleged fundamental laws and particularly those rules which best expressed the eighteenth century idea of a constitution.²

First of all, there were the numerous maxims which assured the continuance of monarchy. Even the radical opponents of the crown, in order to ward off the imputation of treason, began their attack with full-mouthed protestations of loyalty to the reigning house and in the opening sentences conceded a plen-

¹ Mémoires d'Argenson, vi, 452; August, 1751: "Ici le parlement intéresse la nation, évoque la constitution fondamentale, voilà de quoi la faire révolter!" *Ibid.* ix, 249; April 14, 1756: "L'on observe que tous les parlements font des remontrances avec hardiesse pour peu de chose, et comme sûrs de l'emporter; que le peuple, dans les halles, commence à parler de lois fondamentales et d'intérêts nationaux, ce qui marque une fermentation dangereuse contre l'autorité." Mémoires secrets d'Augeard, p. 81: "Il faut bien que le roi soit maître du parlement, mais que personne ne le croie; sans cela tout serait perdu."

²The early disagreement as to what were the undoubtedly *lois fondamentales* has been well discussed by a modern writer, Georges Weill, *Les théories sur le pouvoir royal en France, pendant les guerres de religion* (Paris, 1891). Weill writes (p. 278): "Aucun de ces théoriciens [of the 16th century] . . . ne manque d'insister sur les *lois fondamentales* du royaume . . . Il est difficile d'en dresser la liste exacte; . . . on n'en peut citer qu'une, l'inaliénabilité du domaine, sur laquelle tout le monde se mette d'accord . . . l'un y voit un avantage pour le royaume, l'autre pour le roi." The uncertainty as to the precise content of the *lois fondamentales* continued throughout the old régime, though public opinion tended increasingly to enlarge their scope and application.

tude of power which progressively dwindled with each succeeding phrase. Of course, it is unnecessary to state that the avowed supporters of absolutism eagerly availed themselves of the catch-word "fundamental law" to clinch the argument for prerogative.

The Salic law, the inalienability of the territorial domain and the obligation to defend it—these were the foundation stones of the venerable edifice of monarchy.¹

The statement of the rights of the crown is usually accompanied by a statement of the limitations upon royal power, with especial insistence upon the supremacy of law and the subordination of force.²

¹ "L'immutabilité du gouvernement monarchique; l'ordre de la succession au trône; l'indépendance de la couronne; l'autorité absolue du monarque, autorité qui réside pleinement, uniquement et essentiellement dans la personne du roi; l'inaliénabilité de cette autorité suprême, suivant la formule du serment de nos anciens rois." La tête leur tourne (1788), pp. 12, 13.

"La loi de la succession à la couronne aux mâles; la souveraineté du roi." Les vrais principes de la monarchie française, par l'Ami des Loix (1787), p. 3.

"Le droit de la maison regnante au trône, de mâle en mâle, par ordre de primogéniture, à l'exclusion des filles et de leurs descendants." Flammermont, iii, 745; May 3, 1788.

"En France la première loi fondamentale est que tout soit soumis à un monarque qui est la source de tout pouvoir politique et civil, et le fait exercer par des puissances intermédiaires subordonnées et dépendantes." Observations sur l'imprimé intitulé: "Réponse au citoyen qui a publié ses réflexions" (1770), p. 49.

"N'est-ce pas une loi fondamentale de l'État que chaque prince est obligé de transmettre sa couronne à son successeur avec toutes les prérogatives dont il a joui lui-même?" Lettres sur les remontrances du parlement (1753), p. 149.

² "La France est une monarchie gouvernée par le roi, suivant les lois." Flammermont, iii, 745; May 3, 1788.

The power of the monarch is limited by "la loi naturelle, par la loi divine, par les lois constitutives fondamentales de l'État, et c'est en cela que diffère essentiellement le monarque du despote." Richard (a Dominican), Lettres flamandes à un ami français sur les différens du monarque de France avec ses parlemens (Lille, 1788), p. 5.

"Toute puissance créée ne peut rien ordonner de contraire à la loi de Dieu, ou au droit naturel . . . Si le prince violait les loix fondamentales, les conditions sous lesquelles il a reçu la couronne, il n'y aurait aucune obligation de lui obéir." Maximes du droit public français (2nd ed., Amsterdam, 1775), vi, 113.

"Ce n'est pas la force, c'est la loi constitutive et fondamentale qui est la mesure commune des droits et des devoirs mutuels et réciproques du souverain et de la nation." Remontrances du Parlement de Besançon; March 11, 1771; Recueil, vol. ii, pp. 406, 407. Bib. Nat. Lb. 38, 1256.

In protesting against the use of the military power in civil affairs, the Parliament of

In order to make good the protecting surveillance of the laws, it was necessary to establish the rights of parliament beyond question, by giving those rights an important place in the constitution. It may well be imagined that parliament was not slow to develop a theory of its own prerogatives and to erect those prerogatives into fundamental laws.¹

It will be remembered that in considering the *voloné légale* and distinguishing between lawful volition and volition made lawful, it was shown that the monarch's lawful volition was his sphere of freedom limited by certain fundamental laws. Aside from that absolute freedom, it was not disputed that he had a degree of tentative liberty in legislation, for he had the undoubted right to frame and propose edicts and ordinances. It was necessary, however, at least according to the theory of parliament, that the will thus expressed be verified in a *cour souveraine*, according to the norms of the constitution, before it could become valid as law. As we have seen, the king was supposed thus to guard himself against "surprise."

In order to preserve the constitution inviolate, the parliament asserted that it could freely deliberate, follow deliberation by remonstrance, and finally even refuse to register at the king's command, in spite of *lit de justice* and *lettres de cachet*. At the

Paris utters a direct menace to royalty, saying that, if the king disregards the laws, "il ne subsisterait pour fondement à son trône que la force, qui peut être détruite par la force." Flammermont, ii, 435; January 18, 1764.

¹ Parliament quotes Francis I as saying: "Les lois fondamentales de son royaume étaient de ne rien entreprendre sans le consentement de ses cours souveraines, entre les mains desquelles résidait toute son autorité." Flammermont, ii, 69; November 27, 1755. "De droit constitutif et national, votre parlement, qui est la cour de France, a de tout temps été la première cour du royaume." Flammermont, iii, 257; January 8, 1775.

In order to insure its permanence, the parliament insisted that its members were not removable. *Ibid.* iii, 746; May 3, 1788.—They claimed to be untrammeled in the expression of their opinions: "La liberté des opinions est un de ces priviléges inhérents à l'institution des parlemens; elle est une des principales sources d'où sortent la vérité et la justice." Remontrances du Parlement de Dijon; March 15, 1759; Recueil de pièces sur l'histoire du Parlement de Besançon, vol. ii. p. 586.

There was, moreover, a limit to their obedience. "Le chef-d'œuvre de toutes ces ordonnances, Sire, est sans doute d'avoir posé des bornes à l'obéissance des magistrats." Remontrances du Parlement de Normandie; May 28, 1789. Bib. Nat. Lf. 25, 135, p. 21.

ceremony of the *lit de justice*, it claimed the right to have the votes of its members counted, and declared that a majority vote in the negative would operate to veto the law proposed.¹ This was a clear violation of all the traditions of French monarchy, but the parliament was often able to effectuate its will by appealing to public opinion and preventing the execution of a law registered by the king's sole will. Moreau is one of the numerous authorities for the statement that a statute registered by force tended to become a dead letter.² How formidable Parliament's resistance might be, we can judge by the anxious remonstrance of a friend of royalty in 1787.

Parliament interprets the law, extends or restricts it at pleasure, keeps

¹ "Il est incontestable qu'en France le droit législatif réside dans la couronne seule, et qu'il ne s'étend pas moins sur les magistrats que sur les peuples."

"Mais il est constant aussi qu'en France . . . toute volonté du monarque n'est pas une volonté légale; et que la formation des loix est essentiellement assujettie à certaines formes publiques, à certaines délibérations solennelles." Observations sur la déclaration du 10 déc. 1756 au sujet de l'enregistrement des loix et de la discipline essentielle du parlement, p. 3. Bib. Nat. Lb. 38, 714.

"Le parlement est en effet l'organe des volontés légales des rois, et leur sagesse, autant que leur bonté, l'a établi, de toute ancienneté, leur conseil public et légal." Justification du parlement, ou Observations sur le discours de M. le Chancelier au lit de justice du 7 déc. 1770, p. 35. Bib. Nat. Lb. 38, 1060.

"L'ancienne forme du gouvernement français ne permet pas qu'aucune volonté du prince ait d'exécution publique et force de loi dans le royaume qu'elle ne soit précédée d'une délibération du parlement." Flammermont, i, 576; April 9, 1753.

"Maxime fondamentale, qu'il est d'une indispensable nécessité que toutes les lois reçoivent dans votre parlement leur dernière forme par l'enregistrement qui en est ordonné." Flammermont, ii, 31; November 27, 1755.

"C'est une maxime inviolable en France, que nulle loi, nulle institution publique, ne peut être établie dans le royaume que par la sanction du prince et le consentement du peuple." Arrêté du bailliage . . . de Chaumont, March 16, 1771.

"C'est une loy fondamentale en France, que rien ne peut être imposé sur les sujets du roy, et qu'on ne peut faire aucun officier nouveau, que par le consentement du parlement, qui représente l'aveu général de tout le peuple." De la nature ou qualité du Parlement de Paris, in Mémoires sur le Parlement de Paris. Bib. Nat. MSS. nouv. acq. fr. 7981.

"La nation s'alarme, parce qu'elle se voit enlever ce droit incontestable, perpétuel, qu'elle a toujours eu d'examiner la loi, d'y donner son consentement, si elle l'approuve; de la rejeter, si elle lui paraît dangereuse; ou de la modifier si elle y trouve des inconvénients." La nouvelle conférence entre un ministre d'État et un conseiller au parlement (1788), p. 25. Bib. Nat. Lb. 39, 559.

¹ Exposition et défense de notre constitution monarchique française, ii, 139.

it silent or makes it speak, withholds or gives consent, nullifies governmental power or sets it in motion—is not this reigning like a despot? Thus it modifies the expressions of the royal will, imposes conditions before affixing the seal of its consent, demands from the king an account of his expenditures, marks out for him the path which he must follow if he wishes his edicts enforced.¹

Especially under weak monarchs and during minorities, these courts of law wrought havoc with the kingship.²

From the point of view of political science, a valid excuse for the parliament's encroachments upon royal authority may be found in the use which it made of the power thus gained, in guaranteeing the liberties and immunities of Frenchmen. Its protestations of disinterestedness we may disregard altogether, but we must not neglect the substantial benefits which accrued

¹ "Le parlement interprète la loi, l'étend ou la resserre à son gré, la fait taire ou la fait parler, refuse ou consent, rend le pouvoir nul ou actif, n'est-ce pas là régner despotalement? Aussi modifie-t-il les volontés royales, met-il des conditions au sceau de son consentement, demande-t-il compte au roi de ses dépenses, lui présente-t-il la route qu'il doit suivre s'il veut que ses édits soient exécutés." Lettres surprises à M. de Calonne (1787), p. 11. Bib. Nat. Lb. 39, 363.

² "Un des plus éclairés et des plus zélés parlementaires, à qui je demandais de me marquer précisément les bornes qui séparent l'usurpation d'avec le droit des parlements: 'Les principes,' répondit-il, 'en cette matière sont fort obscurs; mais, dans le fait, le parlement est fort sous un roi faible, et faible sous un roi fort.'" Mémoires de Duclos, Mémoires relatifs à l'histoire de France, vol. xxiv, p. 551.

The power which parliament assumed during periods of minority is well indicated in a pamphlet published in the midst of the troubles of the Fronde. The author asserts that there are two important *lois fondamentales*: (1) "que nous ne reconnaissons en France qu'une seule autorité; (2) que nos rois l'ayant communiquée à leurs parlemens pour le bien de leurs subjets et particulièrement pour la conduite et l'administration des affaires du royaume, il n'y a que les compagnies souveraines qui la puissent exercer légitimement pendant la minorité." Importantes vérités pour les parlemens, protecteurs de l'Estat, conservateurs des loix, et pères du peuple; tirées des anciennes ordonnances et des loix fondamentales du royaume (Dedié au Roy. Par I. A. D. Paris, 1649), p. 7. Bib. Nat. Lb. 37, 880.

Another Fronde publication, the famous *Histoire du temps*, opens with this paragraph: "La France opprimée par la violence du ministère rendait les derniers soupirs, lors que les compagnies souveraines, animées par le seul interest public, firent un dernier effort pour reprendre l'autorité légitime, que la même violence leur avait fait perdre depuis quelques années, parce qu'elle avait toujours été le plus fort rempart de la liberté publique, et comme le sanctuaire dans lequel s'étaient toujours conservées les loix fondamentales de l'Estat." L'*Histoire du temps*, ou le véritable récit de ce qui s'est passé dans le parlement depuis le mois d'Aoust 1647 jusqu'au mois de Novembre 1648. Bib. Nat. Lb. 37, 1.

to the public as an incidental result of parliament's consistent selfishness.

Of all immunities, the right to the peaceable possession of acquired property was the one most persistently upheld by the *cour souveraine*. Primarily, the magistrates asserted their own perpetual right to their offices, which they had paid for roundly and considered as an inviolable possession. Often, however, their opposition was enlisted against taxes and imposts, on the ground that the citizens could not be despoiled of their property without their consent.¹ Occasionally, as in the bitter struggle to defeat Turgot's attempts at the equalization of taxes, the parliament stood out with unreasonable obstinacy as the champion of the privileges and exemptions of nobility and clergy.²

Unworthy as were the original motives of parliament, its restless ambition led to an enunciation of general principles, to which it became natural to give a wider application than had at first been intended. In its very hide-bound conservatism and with a view to maintaining itself intact, this body protested ve-

¹ "Nul citoyen ne peut être dépourvu de sa propriété que par l'effet d'un acte volontaire ou d'une condamnation légale; c'est le texte des lois et le vœu comme de votre cœur." Flammermont, iii, 389; April 25, 1777.—"Que la première de toutes les loix, celle qui existe avant les empires et les rois, celle que la nature a donné et que la nature seule pourrait ravir, est la loi de la propriété." Arrêté de la Cour des Aides, August 18, 1787. Bib. Nat. Lb. 39, 401.—"Toute loi qui garantit la propriété est loi fondamentale; tout ce qui y porte atteinte attaque la constitution de votre État." Lettre du Parlement de Normandie au Roi, February 26, 1771; Recueil, vol. ii, p. 214. Bib. Nat. Lb. 38, 1256.—"La justice, Sire, est le premier devoir des rois . . . La première règle de la justice est de conserver à chacun ce qui lui appartient, règle fondamentale du droit naturel, du droit des gens et du gouvernement civil." Moreover, the inequality and the exemptions of the *ordres* are of divine origin. Flammermont, iii, 278 and 279; March 24, 1776.

² Turgot's reform is one which "tend évidemment à l'anéantissement des franchises primitives des nobles, des ecclésiastiques, à la confusion des états et à l'intervention des principes constitutifs de la monarchie." *Ibid.* p. 292.—"Les Français ne peuvent être assujettis à aucun impôt sans leur consentement." Remontrance du Parlement de Bretagne, 1787; Bachaumont, Mémoires secrets pour servir à l'histoire de la république des lettres en France, depuis 1762 jusqu'à nos jours (London, 1789), vol. xxxvi, p. 321.—"Le principe constitutionnel de la monarchie française est que les impositions soient consenties par ceux qui doivent les supporter." Flammermont, iii, 682; August 6, 1787.

Later the parliament said that taxes must be granted by the Estates General assembled as they were in 1614. Cf. Flammermont, iii, 746; December, 1788.

hemently that its members could be judged only by their associates. By an easy extension, that principle led to the general right of citizens to trial by peers, to *habeas corpus* and to freedom from *lettres de cachet*.¹ We cannot here enumerate all the liberties and exemptions which pamphleteers and parliaments from time to time elevated to the dignity of constitutional guarantees, but they were manifold, and they created a taste for constitutionalism which the Revolution was called upon to satisfy.²

¹ "Par la constitution de l'État, par une loi aussi ancienne que la monarchie elle-même, les officiers de votre parlement, qui se rendraient coupables, n'ont et ne peuvent avoir d'autres juges que votre parlement même." *Remontrances du Parlement de Bordeaux; July 21, 1756*; p. 51. Bib. Nat. Lf. 25, 107.—"Une maxime primitive, et qui subsiste encore dans notre gouvernement, fonda dans les premiers âges de la monarchie le droit de pairie en faveur de tous les citoyens . . . Le supérieur ne peut être jugé par son inférieur. C'est le principe annoncé dans les capitulaires de nos rois, puisé dans la nature même, et dont l'autorité subsistera toujours." Flammermont, ii, 59; November 27, 1755.—"Le droit de chaque citoyen de n'être jamais traduit en aucune matière devant d'autres juges que ses juges naturels, qui sont ceux que la loi lui désigne." *Ibid.* iii, 746.—"C'est une maxime de notre monarchie, que nul citoyen ne peut être constitué prisonnier sans un décret du juge." *Ibid.* iii, 716; March 11-13, 1788.—"Le droit, sans lequel tous les autres sont inutiles, celui de n'être arrêté, par quelque ordre que ce soit, que pour être remis sans délai entre les mains des juges compétents." *Ibid.* iii, 746.—It is a "maxime" or "loi fondamentale" . . . "que les lettres de cachet ou les ordres verbaux n'ont aucun empire sur le fait de la justice, et que les juges sont non-seulement autorisés à n'y avoir point d'égard, mais qu'il leur est formellement enjoint de n'y point ol éir." *Maximes du droit public français* (2nd ed., Amsterdam, 1775), ii, 83. Bib. Nat. Lé. 4, 53B.

² The first *loi fondamentale* is "le salut du peuple, qui forme la loi suprême."—*Maximes du droit public français*, vi, 113.

A sweeping *loi fondamentale* is "La liberté politique de tout Français naissant libre." *Les vrais principes de la monarchie française, par l'Ami des Lois* (1787), p. 3. Bib. Nat. Lb. 39, 398.—"La liberté n'est point un privilége, c'est un droit, et respecter ce droit est le devoir de tous les gouvernements." Flammermont, iii, 720; March 11-13, 1788.

"Il est indubitable que la nation a le droit de se convoquer elle-même . . . selon les besoins de l'État." This remarkable statement is found in a pamphlet already quoted, written in 1771: *Inauguration de Pharamond; ou Exposition des loix fondamentales de la monarchie française*.

"Une première maxime incontestable . . . c'est que nul homme ne peut exiger de son semblable une obéissance aveugle en toute occasion. L'homme, en qualité d'être doué de raison, ne peut, sans déranger à sa nature, renoncer à l'exercice de sa raison . . . Une seconde maxime parallèle à la première, c'est que nul homme ne peut promettre une obéissance aveugle." These are extracts from the *Lettre à M. le Comte de . . . , ancien capitaine au régiment D . . . sur l'obéissance que les militaires doivent aux commandements du prince*, a pamphlet contained in vol. iii of *Les efforts de la liberté*, already cited.

In estimating the forces at work in the old régime which prepared men's minds to appreciate the need for a written constitution, it is not sufficient to expatiate on the limitations advanced as *lois fondamentales*. Those laws, whatever sacredness and permanence their advocates ascribed to them, were but sorry make-shifts after all and could afford no lasting satisfaction to men who saw things clear and whole. Their flimsy fabric could offer no adequate barrier to despotism, though a momentary triumph might create the opposite impression. The men who realized this insufficiency, who levelled the shafts of their ridicule against the fragile ramparts of the *lois fondamentales* and who demolished the pretensions of the courts of justice—these men deserve some credit for hastening the dawn of the constitutional era. Their service was not one of construction, but they did good work in creating dissatisfaction with things as they were.¹

Not only did the France of 1789 lack fundamental laws which could claim to be permanent and effective delimitations of power, but she lacked altogether a body of law having general, uniform application to all parts of the realm alike. Nay, worse than that, the provinces and especially the *pays d'état* aspired to such complete local autonomy that unity in the government of France seemed hopelessly impossible. Relying upon con-

¹ There is no more delectable morsel than the rich satire of Voltaire upon the *lois fondamentales*. Cf. *Très-humbles et très-respectueuses remontrances du grenier à sel*, 1770, contained in *Oeuvres* (éd. Bouchot, Paris, 1879), vol. 28, pp. 423 et seq.—Linguet (*Annales*, viii, 75) remarked in 1780: "Je ne sais si dans le droit il peut y avoir une *loi fondamentale*, comme un beau parfait et purement intellectuel. Mais je vois que dans le fait ni l'une ni l'autre n'existe."—There were many obscure pamphleteers who, about the time of the overthrow of the parliaments, gave vent to their disgust at the latter's pretensions. "Ainsi donc, la barrière des parlements, défendue par la magie de ces mots 'loix fondamentales,' quoiqu'il n'existaît rien de tel dans la tête des parlements, comme dans celle des ministres et de quiconque sait ce qu'il dit quand il prononce le mot 'absolu,' était une barrière aussi précaire en France, contre les fantaisies journalières des ministres, que les visions de l'Alcoran le sont en Turquie, pour arrêter le despote dont la volonté loi aurait bientôt tout bouleversé." Simplicité de l'idée d'une constitution et de quelques autres qui s'y rapportent, pp. 45, 46. Bib. Nat. Lb. 39, 10961.

After the Estates General had been converted into the National Assembly, the parliaments became targets for the scornful flings of the radicals: "N'espérez plus faire illusion par les termes imposans de *constitution*, de *loix fondamentales*, de *droits sacrés et inviolables*, de *maximes d'État*, etc." *L'Aristocratie magistrale, ou l'Esprit des parlemens de France* (1789), p. 30. Bib. Nat. Lb. 39, 1759.

ditions, real or pretended, which accompanied their union to the kingdom, the provinces asserted a right to separate administrations and separate constitutions, and now and again characterized themselves as separate nations.¹

¹ Almost at the end of its career, in May, 1788, the Parliament of Paris asserted "le droit des cours de vérifier dans chaque province les volontés du roi et de n'en ordonner l'enregistrement qu'autant qu'elles sont conformes aux lois constitutives de la province ainsi qu'aux lois fondamentales de l'État." Flammermont, iii, 746.—At the same time the Parliament of Brittany protests "contre toute loi nouvelle qui pourrait porter atteinte aux lois constitutives du royaume; aux droits de la nation française, en general; aux droits, franchises et libertés de la province de Bretagne en particulier." Protestation et arrêté du Parlement de Bretagne, May 5, 1788, p. 3. Bib. Nat. Lb. 39, 6392.—These particularistic ideas were very generally diffused "Chaque province a son droit particulier. La Bretagne a son contrat d'union et ses conditions; le Languedoc a ses titres; la Normandie a sa charte authentique et son échiquier; la Franche-Comté a sa capitulation; chaque province a sa cour souveraine, dont l'existence, les droits, l'inamovibilité sont aussi essentiels à la constitution de la province qu'à la constitution de la monarchie." . . . "Les loix générales que le prince est dans l'impuissance de changer, déclarent l'état des magistrats inamovibles: les titres de chaque province lui assurent un tribunal certain dépositaire de ses usages et de ses droits." Réflexions sur ce qui s'est passé à Besançon les 5 et 6 août 1771, pp. 11, 12. Bib. Nat. Lb. 38, 1245—"On peut même dire qu'avant sa réunion à la France, la Franche-Comté avait été entièrement gouvernée par son parlement." Edouard Besson, *Le Parlement de Franche-Comté et la Révolution française* (Besançon, 1890), p. 4.

Any one of the numerous histories of French administration from the time of Richelieu to the Revolution will give examples of the efforts of the local parliaments at maintaining their former comprehensive jurisdiction over their respective provinces. Their conflicts with the "intendants" were a constant source of disquietude. "Le plus difficile pour l'autorité royale sera de soumettre les parlements provinciaux qui sont plus résistants et plus révoltés que celui de Paris. Ils sont tous complotés pour déposséder les intendants de leur autorité." D'Argenson, ix, 372; December 25, 1756.—"C'est la constitution de la province qui l'a garantie des fléaux de la taille et de la gabelle, fléaux qui frappent directement la classe la plus pauvre . . ." "L'atteinte que l'on voudrait porter à une constitution qui a garanti la Bretagne des maux auxquels sont exposées les provinces voisines, ne peut que préparer pour tous un avenir fâcheux." Arrêtés de la Cour du Parlement de Rennes, et du Conseil d'État du peuple de Rennes, January 8, 1789, p. 19. Bib. Nat. Lb. 39, 6796.—"Deux maximes également certaines, Sire, forment la partie la plus essentielle du droit public des pays d'états; ils vous doivent des subsides, et on ne doit point les exiger sans leur consentement." Remontrances du Parlement de Provence; March 28, 1760; p. 18. Bib. Nat. Lb. 38, 827—"Qu'il nous soit permis, Sire, en vertu des loix fondamentales de cet État, de considérer la nation provençale comme une société que vous régissez séparément." Remontrances du Parlement de Provence; 14 janvier 1760; p. 2. Bib. Nat. Lb. 38, 819.—"C'est une loi fondamentale de cette province, qu'au-delà des droits domaniaux et régaliens, affectés au souverain, aucun subside ne puisse être levé sur les peuples, qu'il n'ait été consenti par les états, sous

It would be interesting to trace the wavering, futile efforts of the thirteen parliaments to unite in the formation of a national legislative body, but the scope of this paper will permit no such excursus. Suffice it to say that the union of the parliaments failed of success because of the rampant particularism of the provinces. That particularism was fatal to any all-embracing, symmetrical constitution. It was still deeply rooted in 1789, and it is not impossible that it might have been perpetuated to our own time, had it not been for the tough little man from Corsica who gave France something else to fight about.

In conclusion, I trust that it has become evident in the course of this paper that, while the France of the old régime had no definite constitution, the idea of a constitution had germinated and attained good growth, and that the documents of the revolutionary era are reasonably explicable upon the basis of the documents which had appeared before.

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la forme de don gratuit et volontaire." That right is "la partie la plus essentielle du droit public de ce pays, puisqu'il est l'abrégé de sa constitution." . . . "Le droit qu'a cette province de s'administrer elle-même, suppose non seulement la faculté d'élier ses administrateurs, mais encore celle de repartir dans son sein les impositions pour les deniers royaux et ceux du pays; c'est sur ces deux bases que porte tout l'édifice de sa constitution." Remontrances du Parlement de Provence; November 5, 1756; pp. 21, 22, 48, 49. Bib. Nat. Lb. 38, 709.—"Vos lettres patentes portant établissement d'assemblées provinciales dans toutes les provinces qui n'ont pas d'états particuliers, nous ont été présentées; mais, Sire, ces assemblées ne sont point faites pour votre comté de Bourgogne, elles sont contraires à notre constitution; le voeu même de la loi nous en exclut formellement, puisque nous avons des états." Lettre du Parlement de Besançon au Roi, adressé à M. le Garde des Sceaux, le 30 juillet 1787, p. 3. Bib. Nat. Lb. 39, 382.—"L'idée systématique d'établir dans vos nombreux États un plan uniforme de gouvernement est inconciliable avec les divers intérêts locaux, avec la variété des droits de vos provinces" . . . "Cette uniformité, impraticable dans les différentes provinces de votre royaume, ne peut, sous aucun rapport, s'appliquer à un pays [Navarre] qui n'a jamais été, qui n'est pas devenu une province de France." Remontrances et Arrêtés du Parlement de Navarre, des 21 et 26 juin 1788, p. 10. Bib. Nat. Lb. 39, 601.

"Quelqu'un faisait à un homme de génie cette question : 'Où sont donc les lois fondamentales du royaume?' Il lui répondit : 'Dans la coutume de Normandie'—mot d'un grand sens et d'une profonde sagesse." This passage, taken from Mirabeau's Mémoire sur les états provinciaux (which is to be found in part iv of *L'Ami des Hommes, ou Traité de la population*), shows how strong was the provincial-sovereignty doctrine in France before the Revolution.

A GOLD STANDARD FOR THE STRAITS SETTLEMENTS. II.¹

IN the first instalment of this article the history of the movement for the establishment of the gold standard in the Straits Settlements was briefly sketched, and the plan finally adopted in the spring of 1903 was outlined. This plan, it will be recalled, provided for the recoinage of the British and Mexican dollars then circulating in the Malay peninsula into new Straits Settlements dollars² of the same weight and fineness as the British dollar, and for the subsequent raising of the value of these new dollars to an unannounced gold par by means of limiting the supply, in accordance with the principle by which India raised the gold value of the rupee.

An order in council issued by his majesty the king, June 25, 1903,³ authorized the governor of the Straits Settlements, with the consent of the secretary of state, to determine by proclamation a date upon which the new dollar should become the standard legal-tender coin of the colony, and upon which the Mexican dollar should be deprived of that quality. On October 2, 1903, there were issued, under authority of "the coin import and export ordinance, 1903," two orders in council,⁴ the one prohibiting

¹ The first portion of this article appeared in the *POLITICAL SCIENCE QUARTERLY*, vol. xix, pp. 636-649, December, 1904, and was subsequently reprinted in the report on *The Gold Standard in International Trade*, submitted by the commission on international exchange to the secretary of war, October 22, 1904; pp. 451-460. Since that time the writer has made a special trip to the Straits Settlements for the purpose of studying the progress of the currency reform there, and the present discussion is based largely upon information collected during a two weeks' study of the situation on the ground.

² The Straits Settlements subsidiary silver coins were distinctive coins coined at the royal mint especially for the Straits Settlements. They were accordingly retained as part of the new system, as likewise were the copper coins.

³ This order will be found printed at pp. 291, 292 in the report on the *Stability of International Exchange*, submitted by the commission on international exchange to the secretary of war, October 1, 1903. Cf. also article on "Money, Weights and Measures" in the *Singapore and Straits Settlements Directory*, 1899, appendix, pp. 19-21.

⁴ Cf. *Report on the Stability of International Exchange*, p. 294.

the importation of British and Mexican dollars into the colony¹ from the third day of October, 1903,² the other prohibiting the exportation from the colony of the new Straits Settlements dollars from the same date.³ As a result of the monetary isolation of the Straits Settlements arising from these orders, merchants experienced for some time considerable difficulty in settling trade balances with other countries.⁴

By the end of the summer of 1904 the bulk of the old currency had been withdrawn from circulation, and on August 31 the governor issued an order removing the legal-tender quality from British and Mexican dollars and providing that they should thenceforward not be receivable in payment of government dues. On that date the old dollars ceased to be exchangeable for the new at government offices. "Thus," said the chairman of the Singapore chamber of commerce, in his address before that body on September 22, 1904,

the second important step has been smoothly and successfully effected, and there is cause for congratulation that the ground has been cleared for the succeeding stages of the currency scheme. The careful guidance of the scheme so far by the government, notwithstanding its

¹ The Federated Malay States and Johore were excluded from the application of these orders. Report on the Stability of International Exchange, p. 294.

² At a later date, when a considerable part of the old currency was being tied up in the process of recoinage, and there was in consequence a scarcity of currency to meet trade demands, the government authorized the banks to import certain amounts of British and Mexican dollars for temporary use, on condition that they should be reexported as soon as the scarcity of money arising from the recoinage should be over. In September, 1904, the governor in council, in response to an urgent petition of the Singapore chamber of commerce, issued an order exempting, until the Chinese New Year, British North Borneo, Labuan and Sarawak from the operation of the order prohibiting the importation of British and Mexican dollars into the Straits Settlements.

³ This latter order has been to a considerable extent evaded. It is said that several hundred thousand of the new dollars are continually passing back and forth between the Straits Settlements and China. The order was suspended for a time, but was again put into operation on February 13, 1906. At one time about two million of the new dollars were exported to Hong Kong, where they brought a premium of between three and four per cent; and at another time, when it was feared that an excessive number of the new dollars had been coined, the governor permitted the exportation of some 500,000 dollars to Hong Kong on condition that they be chopped so that they could not be returned.

⁴ Cf. Report of the Singapore Chamber of Commerce for the year 1904, pp. 5, 101-105.

characteristic difficulties, must meet with cordial appreciation on the part of the mercantile community.¹

The work of withdrawing the old coins and of recoining them was greatly facilitated by the fact that the government possessed in its currency note reserve a large supply of the old dollars, which it was able to commence shipping immediately to the Bombay mint for recoining, and by the fact that it was able to use this reserve as a sort of continuing fund during the entire process of the recoining.² Other circumstances of importance which assisted the government in expediting the recoining were the facts that the recoining was effected at the comparatively near-by city of Bombay, and that, as the result of the heavy influx of the old dollars in the summer of 1903, the local banks were oversupplied with these coins and shipped them in large amounts to Bombay for recoining on the account of the government without interest charge.

The recoining was completed about November, 1904. The total number of British and Mexican dollars sent to the mint to be converted was 35,372,541, and the total number of Straits dollars minted therefrom was 35,400,576.³ The result of the recoining was therefore a profit of \$28,035, which must be deducted from the total expense of reminting, which amounted to \$788,180.⁴ By the end of November, 1904, the new dollars had been almost completely substituted for the old in the colony's circulation,⁵ and the government was confronted with the task of raising the dollar to "whatever value in relation to the sovereign might be decided on" as the permanent gold par.

The course of appreciation is shown in the accompanying chart

¹ *Ibid.* p. 5.

² The government's note guarantee fund consists in part of coin and in part of securities. The average circulation of government notes for January, 1904, which was a typical month, was \$16,503,167, and of this amount \$10,231,006 was secured by coin. Cf. Report of the Commissioners of Currency for the Straits Settlements for January, 1904.

³ There was in addition a withdrawal from circulation of about \$250,000 in redundant small change, which was recoined into fifty cent pieces.

⁴ *Economist*, vol. lxiii, part ii, p. 1672.

⁵ Report of the Singapore Chamber of Commerce, 1904, pp. 4, 5.

and table. It will be seen that Singapore rates fluctuated closely in harmony with the price of silver and with Hong Kong exchange¹ down to about March, 1904,² and that from that time forward until the fall of 1904 they fluctuated with those rates although at a considerably higher level. From December, 1904, to February, 1905, the average bullion value³ of the Straits dollar was actually higher than the average sterling telegraphic transfer rate⁴ in Singapore. The decline in the price of silver in March and April, 1905, was not accompanied by an appreciable decline in Singapore exchange, and from that time forward the divorce of the Straits dollar from the silver standard may be considered to have been effective.

On January 29, 1906, the governor in council issued an ordinance supplemented by an executive order declaring the sterling value of the new dollar to be two shillings and four pence.⁵ Soon after this action had been taken, telegraphic rates settled

¹The unit of value in Hong Kong is the "chopped" Mexican or British dollar. Unchopped dollars usually command premiums there of several per cent.

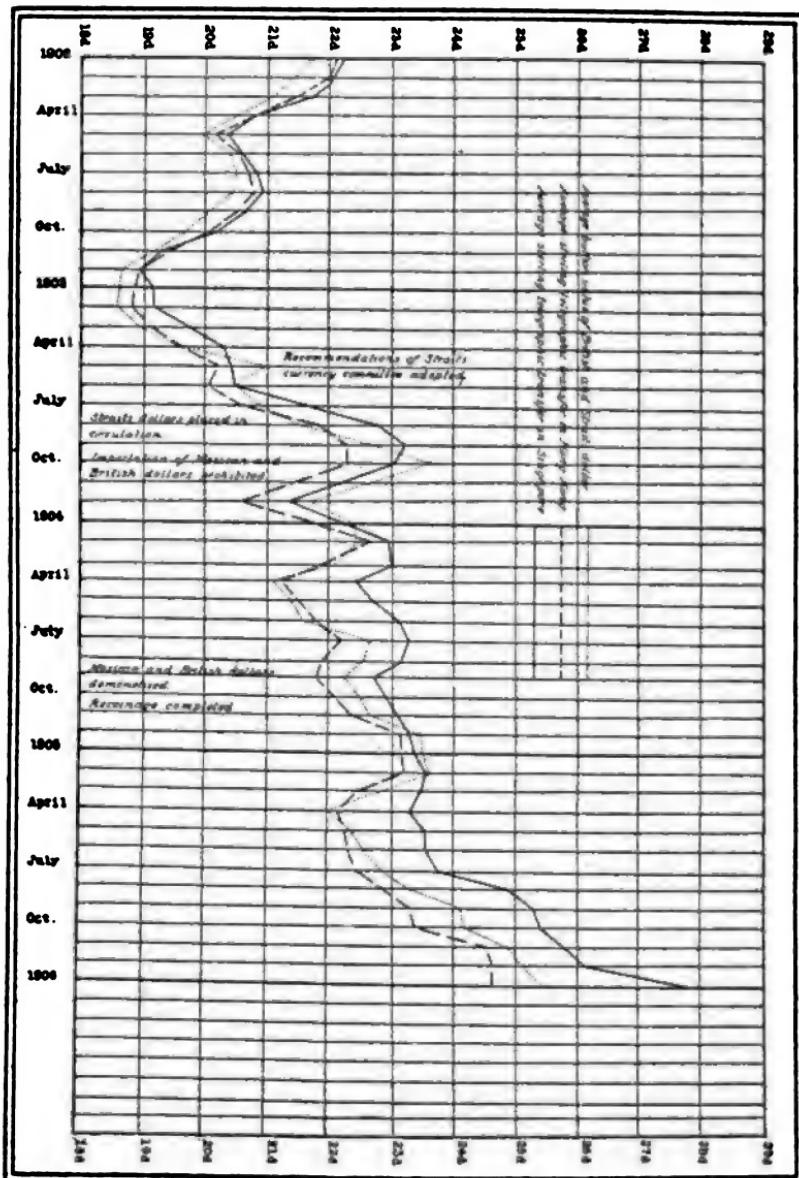
²The rise of Singapore exchange above Hong Kong exchange and above the bullion value of the dollar between July and October, 1903, was due to the anticipated redemption of British and Mexican dollars by the government at par in the new dollar, and, as pointed out in the previous number of this article, was the reason for the heavy influx of British and Mexican dollars into the Straits Settlements at that time. The supply finally became so excessive that exchange was forced down below bullion point between October, 1903, and January, 1904, and the dollars were reexported in considerable quantities.

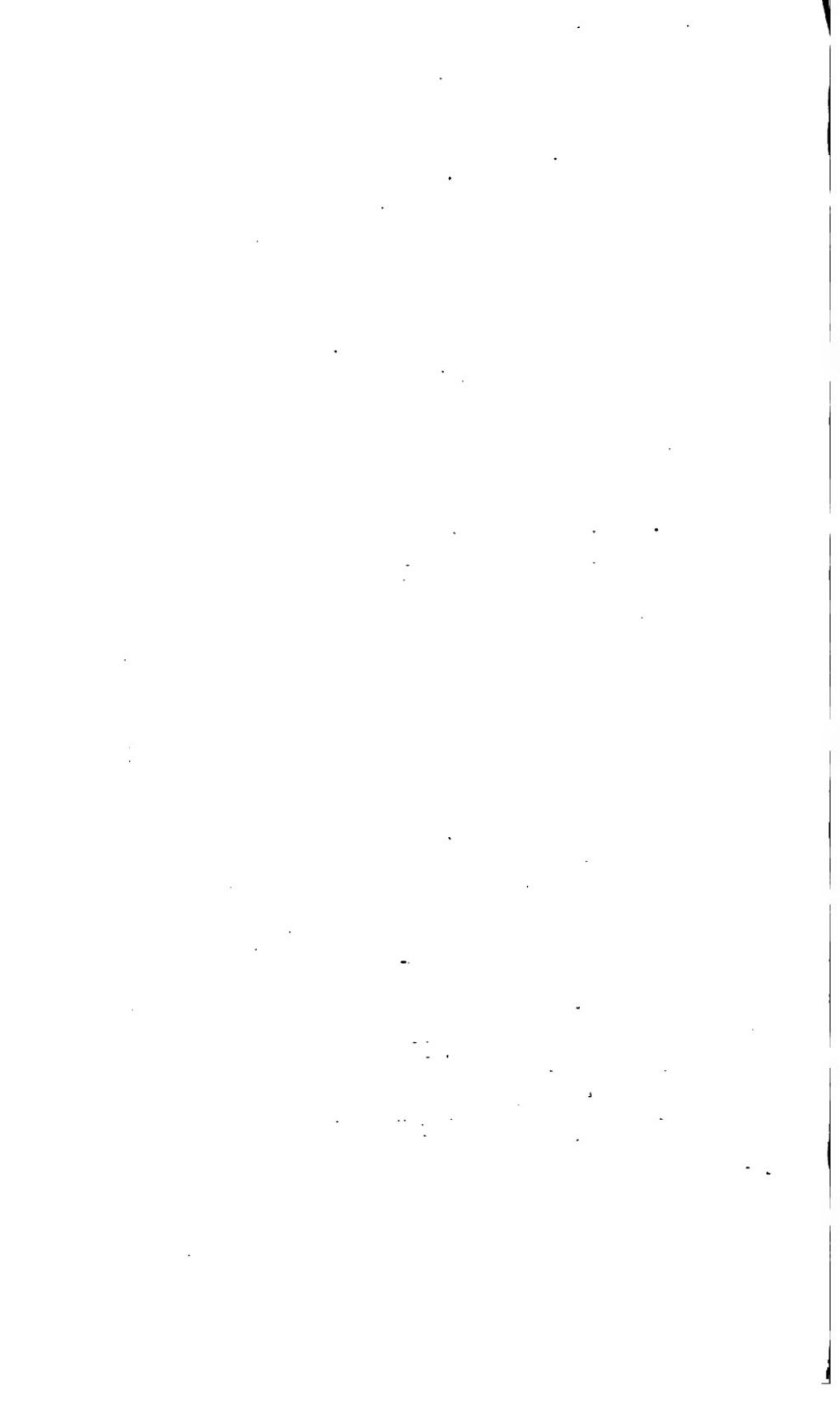
³By "bullion value" I mean the value of the fine-silver content of the dollar in London, according to the London prompt price (the price for immediate delivery) of standard silver, without allowance for shipping expenses.

⁴Sterling exchange rates in Singapore, as in Hong Kong, Manila and other Oriental port cities, are always quoted in terms of sterling instead of in terms of the local money. A telegraphic transfer rate of two shillings, for example, in Singapore, would mean that a dollar in Singapore would buy two shillings laid down by cable in London; a buying rate of two shillings for four-months local bills would mean that the banks would give a dollar for each two shillings of local bills drawn against exports and payable in London by the importer four months after sight. A rising exchange therefore signifies an increasing sterling value to the dollar, and a falling exchange a decreasing sterling value. Particular attention is called to this simple fact for the benefit of readers not familiar with the Eastern exchanges, because exchange rates in other countries are often quoted in exactly the opposite way.

⁵The procedure followed in "fixing" the value of the dollar is explained in detail *infra*.

APPRECIATION OF THE STRAITS SETTLEMENTS DOLLAR.





RATES OF STERLING EXCHANGE IN SINGAPORE COMPARED WITH RATES IN HONG KONG AND WITH THE BULLION VALUE OF THE BRITISH AND THE STRAITS DOLLAR

DATE	SILVER ¹	HONG KONG			SINGAPORE			FOUR MONTHS BANK PAPER		
		STERLING EXCHANGE			TELEGRAPHIC TRANSFERS			STERLING EXCHANGE		
		AVERAGE BULLION VALUE OF BRITISH DOLLAR ²	HIGH	LOW	AVERAGE	HIGH ³	LOW ³	AVERAGE ⁴	HIGH	LOW
1902	d	d	d	d	d	d	d	d	d	d
January	25 11-16	21 21-32	22 3-8	22 3-32	22 3-8	22 1-16	(22 7-32)	22 11-16	22 5-16	22 1-2
February	25 7-16	21 7-16	22 7-8	21 31-32	22 1-8	22	(22 1-16)	22 3-8	22 1-4	22 5-16
March	25	21 3-32	21 15-16	21 5-16	21 1-2	21	21 11-16	21 1-4	21 5-8	21 15-16
April	24 3-8	20 17-32	21 3-8	20 1-8	20 13-16	21 7-16	20 1-4	20 27-32	21 11-16	20 1-2
May	23 11-16	19 31-32	20 11-16	19 7-8	20 3-16	20 13-16	19 13-16	20 5-16	21 1-16	20 9-16
June	24	20 13-32	20 13-16	20 5-16	20 9-16	20 1-4	20 9-16	20 1-8	20 1-2	20 13-16
July	24 3-8	20 9-16	20 7-8	20 7-16	20 23-32	21 1-8	20 1-2	20 13-16	21 3-8	21 1-16
August	24 7-32	20 7-16	20 13-16	20 11-16	20 3-4	21	20 13-16	20 29-32	21 1-4	21 1-16
September	23 7-8	20 1-8	20 13-16	20 3-8	20 9-16	20 15-16	20 3-8	20 21-32	21 3-16	20 5-8
October	23 13-32	19 23-32	20 3-8	20 1-8	20 7-16	20 1-2	20 7-32	20 11-16	20 1-4	20 15-32
November	22 13-16	19 7-32	19 15-16	18 1-2	19 13-32	20 1-8	18 1-2	19 5-16	20 3-8	18 3-4
December	22 3-16	18 11-16	19 1-4	18 11-16	18 31-32	19 1-2	18 3-8	18 15-16	19 3-4	18 5-8
Year	24 3-32	20 5-16	22 3-8	18 1-2	20 5-8	22 3-8	18 3-8	(20 3-8)	22 11-16	18 5-8

¹ Figures for the period from January, 1902, to June, 1905, taken from Kemmerer, Second Annual Report of the Chief of the Division of Currency to the Treasurer of the Philippines Islands, pp. 27, 28; figures for the period subsequent to June, 1905, are based on an extension by the writer of the figures contained in that report.

² The British dollar and the new Straits dollar each contain 416 grains of silver .900 fine. Issued such as these statements are issued only on the dates of the outgoing European mails there is a certain overlapping at the beginning and end of each month.

³ These averages were computed by the writer from telegraphic rates furnished daily by the Manila branch of the Hong Kong and Shanghai Banking Corporation. Figures in parentheses represent mean rates instead of average rates.

DATE	SILVER ¹	HONG KONG STERLING EXCHANGE			SINGAPORE STERLING EXCHANGE			FOUR MONTHS BANK PAPER		
		TELEGRAPHIC TRANSFERS			TELEGRAPHIC TRANSFERS			AVERAGE ⁴		
		HIGH	LOW	AVERAGE	HIGH	LOW	AVERAGE ⁴	HIGH	LOW	MEAN
1903										
January	22 1-16	18 19-32	19	18 3-4	18 27-32	19 7-16	18 7-8	(19 5-32)	19 11-16	19 1-8
February	22 3-32	18 19-32	19	18 3-4	18 13-16	19 3-8	19 3-8	(19 3-16)	19 5-8	19 1-4
March	22 1-2	18 15-16	19 1-4	18 13-16	19 1-12	20 1-8	19 3-8	19 3-4	20 3-8	20 7-16
April	23 9-32	19 5-8	20 5-8	19 3-16	19 9-16	20 11-16	19 7-8	20 9-32	20 15-16	20 1-8
May	24 29-32	21	20 7-8	19 7-8	20 7-32	20 11-16	20 3-16	20 7-16	20 15-16	20 11-16
June	24 13-32	20 9-16	20 3-16	19 7-8	20 1-16	20 7-8	20 1-8	20 1-2	21 1-8	20 3-8
July	24 13-16	20 15-16	21	20 9-16	22 1-16	20 7-8	21 1-8	21 15-32	22 5-16	21 1-8
August	25 9-16	21 17-32	22 1-2	21 1-8	21 25-32	23 3-4	21 1-8	(22 25-32)	24 1-16	23 1-32
September	26 3-4	22 17-32	22 3-4	21 15-16	22 5-16	23 3-4	22 7-8	23 5-16	23 3-16	23 5-8
October	26 7-8	23 1-2	22 9-16	22 1-8	22 11-32	23 5-16	22 13-16	23 1-32	23 5-8	23 5-8
November	27 1-32	22 25-32	22 1-16	20 7-8	21 1-2	22 7-8	21 7-16	22 7-32	23 3-16	22 3-4
December	25 3-4	21 23-32	20 7-8	20 3-8	20 19-32	21 15-16	20 15-16	21 9-32	22 1-4	21 3-4
Year	24 3-4	20 7-8	22 3-4	18 3-4	20 15-32	23 3-4	18 7-8	(21 5-16)	24 1-16	19 1-8
1904										
January	26 7-16	22 9-32	22 3-4	20 7-8	21 27-32	22 5-16	21 9-16	22	22 5-8	21 7-8
February	26 9-16	22 13-32	23 1-4	21 3-4	22 17-32	23 9-16	21 15-16	22 29-32	23 7-8	22 1-4
March	26 1-4	22 1-8	22 1-2	21 7-16	22	23 1-4	22 7-16	23	23 9-16	23 1-4
April	24 31-32	21 1-16	21 3-4	20 5-8	21 1-4	22 15-16	21 15-16	22 15-32	23 3-16	22 3-32
May	25 3-8	21 3-8	21 3-4	21 5-16	21 9-16	22 15-16	22 1-2	22 23-32	23 3-16	22 3-4
June	25 19-32	21 19-32	21 1-8	21 9-16	21 25-32	23 7-16	22 7-16	23 1-8	23 11-16	23 11-16
July	26 23-32	22 17-32	22 7-16	22 3-16	23 7-16	23 1-4	23 11-32	23 11-16	23 5-8	23 5-8
August	26 21-32	22 15-32	22 5-8	21 9-16	21 31-32	23 7-8	23 1-4	23 5-8	23 5-16	23 5-32
September	26 11-32	22 7-32	22 3-16	21 5-8	21 7-8	23 1-4	23 11-16	23 7-8	23 3-8	23 3-16
October	26 3-4	22 9-16	22 3-16	21 5-6	21 1-16	23 3-16	22 15-16	23 1-2	23 1-4	23 3-8

Silver ¹	Date	Hong Kong			Singapore			STERLING EXCHANGE			Four Months Bank Paper		
		TELEGRAPHIC TRANSFERS			TELEGRAPHIC TRANSFERS			TELEGRAPHIC TRANSFERS			TELEGRAPHIC TRANSFERS		
		High	Low	Average	High	Low	Average	High	Low	Average	High	Low	Mean
		AVERAGE BULLION VALUE OF BRITISH DOLLAR ²			d'	d'	d'	d'	d'	d'	d'	d'	d'
	1904	26 15-16	22 23-32	23 13-16	22 1-4	22 7-16	23 1-4	23 3-16	23 7-32	23 9-16	23 1-4	23 11-16	23 17-32
	November	27 7-8	23 1-2	23 9-16	22 13-16	23 3-16	23 1-2	23 1-4	23 13-32	23 13-16	23 9-16	23 11-16	
	December	26 7-32	22 1-8	23 9-16	20 5-8	22 1-16	23 7-8	21 9-16	22 15-16	23 7-8	21 7-8	22 7-8	
	Year.....												
	1905												
	January	27 31-32	23 9-16	24 1-16	23 7-16	23 21-32	23 9-16	23 7-16	23 15-32	23 7-8	23 11-16	23 25-32	
	February	28 1-16	23 21-32	23 11-16	22 5-8	23 3-16	23 1-16	23 9-16	23 11-16	24 1-16	23 13-16	23 15-16	
	March	26 7-8	22 21-32	22 5-8	22 1-16	22 7-16	23 3-4	23 9-16	23 5-8	24 1-16	23 13-16	23 29-32	
	April	26 1-16	22 7-16	21 13-16	22 3-16	23 9-16	23 1-16	23 7-16	23 15-32	23 13-16	23 11-16	23 3-4	
	May	26 5-8	22 15-32	22 3-4	22 5-16	22 1-2	23 7-8	23 1-2	23 11-16	24 1-16	23 11-16	23 7-8	
	June.....	26 15-16	22 23-32	22 5-8	22 1-4	22 15-32	23 1-16	23 5-8	23 23-32	24 1-16	23 7-8	23 31-32	
	July	27 5-32	22 7-8	22 3-4	22 7-16	22 19-32	24 1-16	23 13-16	23 7-8	24 5-16	24 1-4	24 5-32	
	August	27 3-4	23 8-8	23 3-8	22 5-8	22 15-16	25 1-6	24 1-6	24 7-8	25 11-16	24 1-4	24 31-32	
	September	28 17-32	24 1-16	27 7-16	22 15-16	23 9-32	25 5-8	25 3-16	25 11-32	25 7-8	25 7-16	25 21-32	
	October	28 5-8	24 1-8	23 11-16	23 3-16	23 7-16	25 5-8	25 5-16	25 15-32	25 15-16	25 5-8	25 25-32	
	November	29 13-32	24 13-16	25 1-8	23 5-8	24 15-32	26 1-16	25 5-8	25 7-8	26 7-16	25 15-16	26 3-16	
	December	29 31-32	25 5-32	25 1-16	24 1-4	24 17-32	26 5-8	25 15-16	26 3-16	26 15-16	26 1-4	26 19-32	
	Year.....	27 27-32	23 7-16	25 1-8	21 13-16	23 1-8	26 5-8	23 7-16	24 7-16	26 15-16	23 11-16	25 5-16	
	1906												
	January	30 1-8	25 13-32	24 13-16	24 1-4	24 17-32	28 3-4 ⁴	26 5-8 ¹	27 7-8				

¹ Figures for the period from January, 1905, to June, 1905, taken from *Kemmerer, Second Annual Report of the Chief of the Division of Currency to the Treasurer of the Philippines Islands*, p. 27, all figures for the period subsequent to June, 1905, are based on an extension of the figures contained in that report.

² The British dollar and the new Straits dollar each contain 46 grains of silver one-peso fine.

³ Figures based on the statements of Singapore rates of exchange issued by Fraser and Company, brokers of Singapore. Inasmuch as these statements are issued only on the dates of the outgoing European mails there is a certain overlapping at Fraser and Company, brokers of Singapore, at the beginning and end of each month.

⁴ These averages were computed by the writer from telegraphic rates furnished daily by the Manila branch of the Hong Kong and Shanghai Banking Corporation. Figures in parentheses represent mean rates instead of average rates.

down on a level of $28\frac{1}{2}$, and continued on and about that level during the next five or six months. About that time sovereigns were being imported in considerable quantities by the banks, and the result was a fall in sterling telegraphic transfer rates to $27\frac{1}{8}$. Reports received as this paper is going to press state that in September there was a reaction. The extreme rates for the period from February 1, 1906, to September 20, 1906, are said to have been $28\frac{1}{2}$ and $27\frac{1}{8}$.

Before discussing the reasons which led to the adoption of a two shilling four pence dollar, and the probable effect of its adoption upon the trade of the Straits Settlements, it will be well to consider for a moment the conditions existing in the Straits Settlements during the period while the dollar was being raised.

The depressing influence upon trade of an appreciating unit of value is too familiar to require discussion. Mr. Balfour did not greatly overstate the situation when he declared that a slow appreciation of the standard of value "is probably the most deadening and benumbing influence which can touch the springs of enterprise in a nation."¹ The history of Europe during the dark ages and the history of Europe and America during the period 1873-1897 are stock examples of this influence. The appreciation of the Straits dollar differs in many respects from the ordinary example of an appreciating currency. The appreciating unit in this case circulated in a country very limited in area, whose trade was preëminently foreign rather than domestic. The rate of appreciation was very rapid and, unlike those cases of appreciation resulting from a rise in the value of the material from which the money unit is coined, was clearly perceptible to the public.²

It is an undisputed fact that the period of appreciation—the

¹ Quoted by Francis A. Walker, "The Relation of Changes in the Volume of the Currency to Prosperity," in *Discussions in Economics and Statistics*, vol. ii, p. 235.

² The appreciation of the rupee in India is hardly a parallel case. The gold par to be adopted was known in advance, while the amount of the appreciation, above the minimum gold value possessed by the rupee prior to the announcement of the currency committee's scheme in 1893, was very small. Cf. Robertson, "The Currency Policy of India," in *Journal of the Society of Arts*, March 27, 1903.

period from the summer of 1904 to January 29, 1906, when the sterling par of the dollar was declared—was one of speculative activity, and that in the latter part of this period, that is from about August, 1905, the speculation was so widespread and so intense as to interfere seriously with nearly all legitimate business enterprise.

In order to make clear the character of the speculation indulged in, a word of explanation concerning the banking business in the Straits Settlements is desirable. The banking business in the Straits Settlements, as well as in the Philippines, and in Hong Kong, Shanghai and most of the other port cities of the Orient, is largely confined to foreign exchange operations. By contracting in advance for the purchase or sale of exchange at a definite rate, merchants are accustomed to insure themselves against losses from fluctuations in silver during the interim between purchase and sale of merchandise, while the banks in turn protect themselves by covering their forward purchases of local bills by contracts for the forward sales of bank paper and telegraphic transfers, and *vice versa*. An exporter, for example, knowing in January that in the course of a few months he will have a cargo of produce to ship to the London market, goes to his banker and makes a contract to deliver sometime in the course of the next three, four or six months, as the case may be, sterling bills covering the value of his anticipated shipment, at a rate of exchange agreed upon. In the Straits Settlements the exporter usually has an option of at least two months, *i. e.*, a right to deliver his bills at any time within two months, and frequently an option of five or six months is given. After the fixing of his exchange the exporter often obtains advances from the bank, usually in the form of an overdraft, secured by the pledge of the produce to be exported. In the same manner importers make contracts months in advance, fixing rates of exchange for the purchase of bank paper or telegraphic transfers with which to make remittances for anticipated importations.

In the first instalment of this article it was pointed out that although the sterling rate at which the Straits dollar would be fixed was not declared in advance, as had been done in India in the case of the rupee, it was generally believed that a rate of two

shillings would be adopted. This appears to have continued to be the popular belief as late at least as the latter part of the year 1904, when the sudden advance in the price of silver made it evident to thinking people that a two shilling dollar containing 416 grains of silver .900 fine would be in great danger of the melting pot. Here then was a situation which appeared to the merchant who was inclined to speculate as "a sure thing." The value of the dollar, he reasoned, was bound to rise, and its gold par was certain to be fixed in the probably not distant future at a sterling value materially higher than the one it then had, and at least several per cent higher than its bullion value, whatever might be the price of silver. A merchant contracting in August for the delivery of sterling bills in November or December would have the benefit of whatever appreciation might take place in the dollar in the interim, and, in case his bills should not be ready for delivery at that time, he could presumably cover at a profit by the purchase of bank paper or telegraphic transfers.

As a result of this situation all classes of people began to speculate for a rise in exchange. Sterling bills¹ were offered to the banks in large quantities in the summer of 1905 for forward delivery. Every merchant who had the remotest prospect of having any bills against possible exports during the next six months or so rushed into the market to fix his exchange. Many sales are said to have been made simply on a margin without reference to anticipated exportations. Little attempt was made to cover.² Sterling rates naturally rose rapidly as a result of this demand for dollars, and it soon developed that a certain foreign bank was underbidding all the other banks by about one-sixteenth of a penny, and was in consequence doing the lion's share of the business. This bank, with a branch in Singapore and a sub-branch at Penang, seemed to have under its control a large part of the available supply of dollars. Soon, however, there began to be misgivings as to whether exchange

¹ There was also considerable speculation on the Indian exchanges, particularly by Indian merchants and the so-called "chitties" or Indian money lenders.

² The word "cover" here has the usual significance of offsetting sales by purchases and *vice versa*.

had not gone unreasonably high; all sorts of rumors were afloat; and it was not long before there was a sudden break in the rates, everybody wanted cover, there was a clamor for bank paper and local bills, and down exchange came as rapidly as it had previously advanced. Here likewise the one bank that had done the bulk of the business when exchange was rising overbid its competitors when exchange was falling, and continued largely to control the market. There were at least seven such cycles of exchange fluctuations of greater or less duration between August 1, 1905, and February 1, 1906. Throughout the month of January, 1906, the money market was in a condition of panic, and toward the latter part of the month, about the time of the Chinese New Year, the panic was feverish and intense. There was at this time the usual heavy demand for money to meet the Chinese New Year's liquidations,¹ in addition to the demand to meet the many exchange contracts which were then coming due. The bank which during the previous six months had largely controlled the exchange market, which had, to some extent, dictated terms to the other banks, and upon which speculators had generally relied, found temporary difficulty itself in making collections and in meeting its obligations, and was forced to beg assistance from the other banks in order to take up its contracts. The assistance was finally given but only on onerous terms. A number of the strongest local houses were threatened with bankruptcy, and it was evident that a supply of dollars must be forthcoming from somewhere or there would be a general collapse.

Exchange rates fluctuated so rapidly during this period (there were sometimes five or six quotations a day), such varying rates were quoted by the different banks, and business was done so extensively on rates different from those publicly quoted, that it is impossible to give any adequate idea of exchange fluctuations for the month. The following figures, however, will give a suggestion of the frenzied state of the market. On January 3 sterling telegraphic transfers were quoted in Singapore at 2s. 2½d., on January 5 at 2s. 3½d., a difference of over two and a

¹ All debts to Chinamen are supposed to be settled by the time of Chinese New Year.

half per cent; on January 10 the rates cabled to Manila by one bank varied from 2s. 3 $\frac{1}{8}$ d. to 2s. 4 $\frac{1}{8}$ d., a difference of 1.8 per cent during the day; on January 15 the rate opened at 2s. 4 $\frac{1}{8}$ d. and closed at 2s. 3 $\frac{1}{8}$ d., a difference of 1.7 per cent; on January 18 the rates cabled to Manila by one bank varied from 2s. 2 $\frac{1}{8}$ d. to 2s. 4d., a variation of nearly four per cent during the day. These examples I believe are typical. If they give a wrong impression it is in understating the case rather than in exaggerating it. The manager of one of the leading Singapore banks informed the writer that daily exchange fluctuations in Singapore during January sometimes varied by over five per cent. In individual cases, of course, business was transacted on all sorts of extravagant rates.

The excitement became so intense that the government was finally forced to take action sooner than it had intended. In the latter part of January, when the governor returned to Singapore from a trip to Labuan, he made a statement before the council, the purport of which is said to have been as follows:

He had been surprised to learn that, during his absence from the colony, there had been a sharp rise in exchange, and his opinion was that this was very largely due to speculation upon the intention of the government with regard to the rate which would ultimately be fixed for exchange between silver and gold. This was a matter which no one was entitled to speculate upon; it was one which the government was certainly not in a position at present to make a statement about. As everyone was aware, the course of the silver market had been so peculiar that it was impossible for the government at present to say for certain what the market would be six months hence. Six months ago it was 26d. Today it was over 30d. Would anybody have the boldness to say that six months hence it would not be 26d. again, or that it might not be 34d.? Under these circumstances, it appeared to him that those persons who were speculating on the intentions of the government were indulging in a very dangerous operation, in which they might very likely burn their fingers. He could only say that it was the intention of the government—and he thought this was the opinion of everybody interested in the trade of the place—to fix the dollar at as low a value as possible consistent with security. That was all he was in a position to say on the matter. Whether the point would be higher

or lower than the existing rates, he could not at present state; the facts were not before him on which to form an opinion; but he could say that it was the intention and desire of the government that the dollar should be fixed at as low a value as possible consistent with safety.¹

In the latter part of January authority was sought of the home government to fix exchange immediately. There was some delay, however, in obtaining this authority, and when it was finally received, about January 26, the state of the exchange market was such that it was considered inexpedient to declare the rate at once. On Saturday, January 27, the government sought to steady the market² by asking for bids for the cable transfer to London of £100,000. None of the bids received were accepted, but the request is said to have had the desired effect.

On January 29, 1906, the governor in council issued an ordinance³ declaring that

it shall be lawful for the commissioners to issue notes in exchange for gold received by the commissioners at Singapore at a rate of exchange to be notified by an order of the governor in council with the previous approval of the secretary of state and the commissioners may invite tenders for the issue of notes in Singapore against telegraphic transfers in favor of the crown agents for the colonies in London and may at their discretion accept any tender which affords sufficient margin above the rate fixed by such order in council to cover all charges including interest which may be incurred in remitting to Singapore the equivalent in gold at the fixed rates of the notes issued for such tender. . . .

The sum so received in gold shall form part of the note guarantee fund and may be invested by the commissioners in accordance with the provisions of this ordinance or used by them for the purchase of silver to be minted into Straits Settlements dollars. . . . Provided that the

¹ Statement furnished the writer by a local manager of one of the large Eastern exchange banks.

² This procedure led to considerable unjust criticism of the government on the ground that, knowing in advance what the fixed rate would be, it was endeavoring to beat the market by taking advantage of the higher market rate then prevailing before declaring its fixed rate. No criticism could have been farther from the truth.

³ Ordinance no. 1 of 1906, entitled, "An Ordinance further to amend 'The Currency Note Ordinance 1899.'"

whole of the profit on such minting shall be carried to a separate gold reserve fund and not form part of the note guarantee fund.

Pursuant to the above ordinance the governor in council issued an order¹ on the same day, declaring "that from and after the date of this order the currency commissioners may issue notes in exchange for gold received by them at Singapore at the rate of sixty dollars for seven pounds sterling." Two shillings and four pence, the public were accordingly given to understand, would be the permanent sterling par of the dollar, unless future advances in the price of silver should make the raising of the dollar to a higher par seem desirable. The governor refused to commit himself as to the absolute permanency of the two shilling four pence par.

With the issuance of the above order the money panic stopped, for it was thenceforth possible to obtain from the government dollars in unlimited quantities by the presentation of sovereigns in London. When the horizon cleared it was found that several of the principal banks, and one in particular, had large supplies of dollars in their vaults.

Between July, 1905, and February, 1906, the gold value of about fifty million dollars (inclusive of government notes and of subsidiary and minor coins) had been raised from approximately two shillings to the dollar to two shillings and four pence, an appreciation of over sixteen per cent, representing an increment to the gold value of the country's currency during that time of over eight hundred thousand pounds sterling. This advance is in a small degree to be accounted for by the rise in the price of silver; and the increased value of the notes was dependent slightly on the fact that the government transferred several hundred thousand dollars from the general treasury funds to the note guarantee fund to help make good the decline in the dollar value of the sterling securities held in that fund. The government had at that time established no gold reserve fund, however, and the above advance is to be explained mostly on the ground of a relative reduction of the currency supply. This

¹ *Government Gazette Extraordinary*, vol. xli, no. 5 (January 29, 1906), p. 290.

difference between the bullion value of the new dollars (at which, approximately, they originally circulated) and their money value—a difference which under other methods of currency reform would have accrued to the public treasury as seigniorage profit and would have furnished a substantial part of a gold reserve fund—found its way largely into the pockets of a few speculators. I say “a few” because here, as in most cases of the sort, the great majority who dabbled in the speculation are said to have lost. A large part of the profits went into the vaults of the foreign bank mentioned above (p. 672), whose local manager had carefully planned the exploitation of the currency scheme as early as the fall of 1903. This local manager apparently had for the accomplishment of his purpose a large part of his bank’s assets, and he played a very shrewd and successful game, albeit one which would hardly come in the range of ordinary conservative banking.¹

The government’s action in offering to give dollars for sovereigns, it will be noted, did not necessarily fix the value of the dollar, but simply marked an upper limit to its possible appreciation in terms of gold. Advices received from Singapore under date of September 12, 1906, state that sovereigns to the amount of about £1,000,000 have been presented to the currency commissioners in Singapore in exchange for notes. No action has yet been taken providing for the giving of sovereigns for dollars,² although such action is contemplated as soon as a sufficient supply of gold is accumulated.

¹ The manager of this bank said to the writer that his plan of operations involved practically no risk. He knew, he said, that the dollar would not be fixed at a lower rate than two shillings, and, when silver rose, that it would be fixed at a considerably higher rate, for the government would certainly not fix the dollar at a lower value than five or six per cent above bullion point. These facts he appreciated very early, and he was the first to follow them to their logical conclusion. At first for a short time he overbought, anticipating a fall in the price of silver. He began to oversell as early as the fore part of 1904, and early in the spring of that year his over sales amounted to a very large figure. He kept his heavy figures on this side of the ledger until he gained a virtual control of the market in the summer of 1905, and this control he practically maintained until January, 1906.

² With reference to the subject of the redemption of notes in gold the governor is reported to have said: “If the government were to hold out to the public the immediate prospect of giving gold for notes, and some one came along with notes and de-

The provision of the ordinance of January 29, 1906, authorizing the "issue of notes in Singapore against telegraphic transfers in favor of the crown agents for the colonies in London," is meant to be of a temporary and emergency character. Under ordinary conditions the only method of obtaining dollars of the government will be, it is said, through the presentation of the actual sovereigns in Singapore. The government has no intention (so the governor informed the writer in February) of adopting the principle of the gold-exchange standard which has recently been adopted in the Philippines¹ and in Mexico.² Neither the home authorities nor the officials in Singapore are said to be in favor of that plan.

The objections urged to the adoption of the gold-exchange standard are: (1) That it would unduly interfere with the business of the banks. (2) That it would encourage banks to work on dangerously low cash balances, knowing as they would that they could obtain dollars of the government on a moment's notice by the purchase of cable transfers on Singapore from the crown agents for the colonies in London. (3) That there would be danger of the government's notes depreciating unless they were redeemable in gold in the country itself. (4) That the monetary circulation of the Straits Settlements was too small to make the plan feasible there. (5) That the plan would require a larger reserve fund than would otherwise be necessary, because the government would be compelled to keep a reserve both in London and in Singapore; and that in each place the reserve would have to be large, because drafts on the fund through the

manded gold and government was unable to pay, people would say: 'Here you are holding out that you are prepared to give gold for notes, and the first time you are asked to do so you fail to do it.' They [*i. e.*, government] must first of all get something of a gold reserve before they could hold out any prospect of being able to give gold in exchange for notes, and that time had certainly not yet arrived. As soon as they had a gold reserve they would be prepared to consider the public as far as possible and give gold for notes when required." *Singapore Free Press*, January 30, 1906.

¹ Cf. Kemmerer, "The Establishment of the Gold Exchange Standard in the Philippines," *Quarterly Journal of Economics*, vol. xix, pp. 588-591.

² Ley que establece el régimen monetario de los Estados Unidos Mexicanos, in *Leyes y disposiciones relativas a la reforma monetaria* (Mexico, 1905), pp. 52, 53.

sale of telegraphic transfers would not give the government any such warning in advance of the demands liable to be made as would enable it to replenish the reserve.

The above arguments, all of which were urged upon the writer either by officials or business men in the Straits Settlements, do not appear to be conclusive for the following reasons, which may conveniently be stated in the same order as the objections. (1) If the rates for the sale of government drafts were fixed at the "gold points," as they presumably would be under the gold-exchange standard, and if only drafts of large amounts were to be sold by the government, redemption by the sale of drafts would not interfere appreciably more with the business of the banks than would redemption in coin. Under these circumstances the banks themselves would be the principal purchasers of government drafts, and such drafts would be purchased and forwarded merely in lieu of the shipment of sovereigns. (2) The sale of telegraphic transfers, while desirable in the interest of currency elasticity, is by no means a necessary feature of the gold-exchange standard. If the government were opposed to making a minimum legal reserve requirement of banks, it could limit its sales of drafts to demand drafts or even, if need be, to short time drafts. (3) If government notes were redeemable in silver dollars on demand, and if the silver dollars were redeemable in gold exchange on demand, depreciation would be impossible in a country where the people have the confidence in the government which they have in the Straits Settlements. (4) The system of the gold-exchange standard is better suited to a country with a small circulation than to one with a large circulation. It is evidently easier to maintain a small reserve abroad than a large one. (5) It is not probable that the Straits Settlements would require so large a reserve under the gold-exchange standard as it will under the system to be adopted. Under either system it would need a sovereign reserve and a dollar reserve. Under the system to be adopted both reserves will be located in Singapore; under the gold-exchange standard the dollar reserve would be located in Singapore and the sovereign reserve in London. The sale of cable transfers is not a necessary part of the system, as above pointed

out; and, even if it were, the movement of market rates of exchange would ordinarily give ample warning of a demand for dollar drafts or sovereign drafts. Emergency cases, if such should arise, could be met through the temporary transfer of funds to the gold reserve from the security portion of the note guarantee fund, or through the transfer of dollars to the credit of the home government in Singapore in exchange for an equivalent amount of sovereigns placed to the credit of the Straits government in London.¹ A prolonged and severe drain upon the reserve fund, which in a country like the Straits Settlements would be an extremely improbable contingency if the government withdrew from circulation dollars presented in the purchase of government drafts, could of course always be met by the forward sale on the London silver market of the redundant dollars piling up in the government's dollar reserve in Singapore. The gold-exchange standard would probably enable the country to get along with a smaller gold reserve than will the system to be adopted, inasmuch as it would keep gold coins out of circulation and the demands upon it would be limited to the requirements of meeting foreign trade balances—the only monetary use to which the dollars could not be applied. The Straits Settlements, inasmuch as it is a country for whose trade requirements silver coins are better adapted than gold, and a country which is anxious to maintain its reserve at as small an expense as possible, would in fact seem to be a place peculiarly adapted to the gold-exchange standard. The premiums which the government would realize on its sale of exchange, together with the interest it would obtain on that part of its reserve deposited abroad, would doubtless yield sufficient profit, as in the Philippines, to pay the expenses of administering the currency system and to provide in addition a substantial annual increment to the gold reserve.

Now that the events leading to the declaration of the two shilling and four pence par have been described and the plan so far adopted has been discussed, it will be well to inquire

¹ This is a procedure extensively followed, for example, in the Philippine Islands. Cf. Kemmerer, Second Annual Report of the Chief of the Division of the Currency, p. 10.

concerning the effect which the establishment of this new unit of value is liable to have on the trade of the Straits Settlements and upon the relations existing between debtors and creditors and their respective equities.

First let us consider the purely domestic trade. It is a principle of monetary science that a sudden alteration in the size of the unit of value does not result in an immediate and proportionate alteration in prices. Custom, which is to the world of people what inertia is to the world of things, tends under such circumstances to conserve existing prices. Time is always required for a readjustment of the price level, and the transition from one price level to another often carries with it permanent results of far-reaching consequence. Domestic prices in silver-standard countries respond very slowly to fluctuations in the market price of silver. A Mexican dollar had nearly the same purchasing power in the domestic trade of the Philippine Islands in February, 1903, when it had a gold value of 37 cents United States currency, than it had in October, 1901, when it was worth 50 cents. "Later, when the bulk of the money in circulation came to be the new money, prices seem to have been quite generally transferred from the old currency to the new without any material alteration."¹ When the American troops first introduced the United States dollar into the Philippines, the natives demanded as many American dollars for their produce and wages as they were accustomed to receive Mexican dollars, and in many cases obtained their demands. In time, of course, there was a readjustment. In Porto Rico, after the American occupation, the currency of the country, consisting of about 6,000,000 pesos of Spanish money, was retired from circulation by redemption in United States currency at the rate of one and two-thirds pesos to one dollar of United States currency. The result was a marked rise in prices as measured in gold values.²

¹ Kemmerer, "The Establishment of the Gold Exchange Standard in the Philippines," *Quarterly Journal of Economics*, vol. six, p. 607.

² "The immediate effect of our advertised intention to retire the old currency was a very general raising of prices and a demand for the raising of wages among the smaller merchants, retailers, and workmen. This lasted but a short time, how-

The Straits Settlements have not escaped the application of this law. Prices and wages have not fallen in proportion as the sterling value of the dollar has risen. When the writer was in Singapore, February last, the complaint was heard on every side that the new two shilling four pence dollar would buy no more in the Straits Settlements than did the old dollar a few years before, when it was worth a little over a shilling and six pence. If this is true it means a rise of prices, as measured in gold, of something like 50 per cent within three years. The evidence seems to be that there is considerable truth in the assertion, although it should be said that other forces besides those directly connected with the currency have been pushing prices upward. Wage earners for the most part were receiving last February about the same number of the new dollars that they had formerly received of the old. The same was true of the salaried class in so far as their salaries were fixed in dollars. Many Europeans, however, a few years before had complained bitterly of the losses they were incurring by reason of the depreciation of the dollar, and had in consequence succeeded in having their salaries transferred to a sterling basis. The raising of the dollar therefore led to a proportionate reduction in the salaries of this class as measured in dollars. Wholesale prices, especially of goods imported from gold-standard countries, were showing a strong tendency to decline, and several of the better classes of retail stores were making price reductions on most lines of goods of from five to ten per cent. The great bulk of miscellaneous expenses, such as professional fees, hotel rates, livery rates, laundry charges and the like, were as yet unaffected by the appreciation of the dollar. In general it may be said that the readjustment of prices was taking place very unevenly; that

ever, and the prices of staple commodities, as well as the price of labor, have since worked back toward the old basis, steadily but surely. Today [August 2, 1901] we believe that a conservative opinion would say that the change in the currency is perhaps responsible for a rise in the cost of living of from ten to fifteen per cent. In some parts of the island it is much higher, owing to combinations of capitalists, but these will undoubtedly be dissolved in time." Letter of De Ford and Co., bankers, San Juan, Porto Rico, August 2, 1901, to Mr. Charles A. Conant, special commissioner of the war department on coinage and banking in the Philippines, in Conant, Special Report on Coinage and Banking in the Philippines, p. 119.

in no case was the decline proportionate to the rise in the sterling value of the dollar; that it was most rapid in those lines where competition was keen, as in the case of wholesale prices, and least so where competition was weak and custom dominant, as in the case of wages. It will be observed that such an uneven alteration of prices must have important consequences in the distribution of wealth among the different classes in the community.

Next let us consider the effect of the raising of the dollar upon the country's foreign trade. This trade may be divided into two parts: (1) the transit trade; (2) the export trade in local produce and the import trade in foreign merchandise for domestic consumption.

The Straits Settlements, commercially speaking, are first of all an entrepôt of foreign trade. Singapore is a great distributing center between the East and the West. Aside from the obvious advantages the fixing of a gold par of exchange will have for trade with gold-standard countries, and the equally obvious disadvantages it will have for the trade with silver-standard countries, what will be the effect of the raising of the unit of value on this transit trade?

The actual size of a country's monetary unit, so long as it is stable in value, is a matter of little importance to its foreign trade. Any alteration, however, in the unit of value is liable to have temporarily a detrimental effect on foreign trade. A period of currency reform is always characterized by a lack of confidence and by unsettled business conditions. Merchants know too well the important and subtle influences exercised upon trade profits by slight alterations in a currency system, to be anxious to turn their merchandise even temporarily into the money of a country undergoing such a reform. An unfamiliar currency system, no matter how good it may be, is an obstacle to foreign trade. When to these facts you add that in this particular case the monetary unit was to be raised artificially after an uncertain interval of time to an unannounced gold par, and ultimately to be maintained at this par by a gold reserve which it might take years to accumulate in sufficient quantity to become effective, it may well be imagined that foreign traders

were inclined to be diffident. The writer found that merchants in the Straits Settlements were complaining that the raising of the dollar was driving away the transit trade. There seems to be no question that the complaint was justified. It is to be observed, however, that the raising of the dollar is only one of several causes contributing to this result. For some time there has been observed a tendency on the part of Oriental countries to deal more and more directly with Europe instead of through ports of entrepôt. The "high freights fixed by the Straits Home-ward Conference to Europe and extended to New York in August [1905] have contributed in a marked degree to the natural tendency for small ports to expand and establish direct steam communication with home markets."¹ The fact that the raising of the dollar is a force coöperating with a natural decline in the Straits transit trade would seem to diminish the hope that the trade driven away will return as soon as the gold standard shall be satisfactorily established and prices and wages shall become adjusted to the new unit.²

It is a generally accepted principle that a falling exchange has a tendency to favor export trade at the expense of import trade, and a rising exchange to favor import trade at the expense of export trade. Prices and wages, as previously observed, respond slowly to alterations in the value of the monetary unit as measured by the foreign exchanges. As a result, in a country like the Straits Settlements, an importer of merchandise from gold-standard countries receives practically the same num-

¹ Cf. *The [London] Times, Financial and Commercial Supplement*, January 22, 1906, p. 41.

² The following quotation from the *Singapore Free Press* of February 8, 1906, concerning the trade with Siam is apposite: "One of the most interesting features of the Bangkok trade last year was the marked development of a tendency to send orders direct to Europe instead of to the Singapore middleman. In the past, the Chinese importer, a very important factor in the year's total, dealt invariably with Singapore or in a small measure with Hong Kong houses. Today, says the *Bangkok Times*, 'the saving of the middleman's profit has become a matter of some importance, and notwithstanding Singapore's advantage in being near at hand the proportion of direct orders in the total has been growing for some time. This tendency has now been accentuated by the exchange difficulty, and it is doubtful if any improvement is to be looked for there.'"

ber of dollars for his merchandise and pays for it practically the same gold prices for a short time after a rise or fall in exchange as before. If exchange goes up he will therefore tend to profit by the higher gold value of the local dollar, and if it goes down he will, *per contra*, tend to lose. The exporter in like manner will continue for a time after an alteration in exchange to pay essentially the same wages and the same prices for the produce he exports as before, and will obtain the same gold prices for what he exports. He will accordingly temporarily tend to profit to the extent of a fall in exchange and to lose to the extent of a rise. These gains and losses are of a temporary character and sooner or later a readjustment takes place. In the long run the prosperity of the export trade and of the import trade are inseparably linked together, because it is the one that pays for the other. The extent of these temporary profits or losses, as the case may be, the length of time during which they will be realized and the persons to whom they will accrue depend upon the comparative strength of the markets and of the different parties to the transaction. Take, for example, the case of a rising exchange. Where competition among the importers of a given commodity is keen, or where the price in the importing country is for any other reason weak, local prices will soon fall on a rising exchange and the consumer will be the benefited party. Where competition among importers is weak in the importing country, or the price of the commodity is for any other reason strong, the importer¹ will reap the benefit of a rising exchange. Where the sellers of the article in the exporting country are in a position to control the price, either by combination or otherwise, they may be able to reap the profit by advancing their prices as exchange rises. The same principle applies to the export trade on a rising exchange. If competition among producers is weak and the demand for the commodity in question is strong, the burden of the advance in exchange may be shifted to the buyer or to the foreign consumer. Where the supply of labor employed in the production of the commodity

¹ In such cases, of course, the profit may be realized in part by the importer, in part by the wholesaler, and in part by the retailer.

is excessive and the wage-earners are not organized, the burden may be shifted to the laborer. Where, on the other hand, the foreign market is weak and the labor supply limited or thoroughly organized, the burden may be shifted to the producer or to the exporting merchant.

Let us apply these principles to the trade of the Malay peninsula during the period of the appreciation of the dollar. It may be said that the rise of the dollar did not, as many anticipated, prove detrimental to the tin trade. Tin is the principal item of export from the Malay peninsula. The Federated Malay States are said to contribute about seventy per cent of the world's supply of tin. The production of that staple is constant and the market is strong; as a result the tin merchant has been able to shift the burden of the rise in exchange to the foreign consumer. The same has been true to a lesser extent of tapioca.¹ On the other hand, pepper and gambier, two import-

PRICES OF CERTAIN STAPLE EXPORTS*

1905	PURCHASED	TIN		LONDON PRICE PER TON							
		MONTH	TONS	PRICE PER PICUL		HIGH		LOW		HIGH	
				HIGH	LOW	L	s	d	L	s	d
January	3539	\$ 79.50	\$ 77.25	132	10	130	2	6	130	2	6
February	1510	77.25	76.50	131		129	12	6			
March	2120	80.375	76.625	134	15	129	10				
April	3275	81.625	79.50	136	5	134					
May	2565	80.375	79.00	136	2	132	15				
June	2770	81.75	79.625	138	17	135	2	6			
July	2640	88.00	81.25	150		139	2	6			
August...	1635	86.875	82.875	151	10	147	5				
September.....	1620	83.50	80.125	148		144	12	6			
October	2725	82.00	80.00	148	2	146	5				
November	2775	84.00	80.875	155	15	148	5				
December	3320	88.75	83.75	164	10	157					

¹ It is impossible to say what the course of tin and tapioca prices would have been in London, had the value of the Straits Settlements dollar not been raised, and to what extent the producers of these articles might not have realized additional profits under such a contingency. It may well have been that the rise in exchange merely hastened an upward movement of prices which would in time have taken place any way. It should be noted in this connection that exporters of such articles realized in some cases additional profits by speculating in their sterling bills.

*Based upon the Yearly Statement of the Singapore Chamber of Commerce, 1905.

BLACK PEPPER

1905	PURCHASED	PRICE PER PICUL		LONDON PRICE PER POUND	
		TONS	HIGH	LOW	HIGH
MONTH					LOW
January	1117	\$ 29.25	25.75	5 7-8	5 5-8
February	935	26.55	25.00	5 5-8	5 1-2
March	888	26.50	25.25	5 5-8	5 1-2
April	1357	26.375	25.70	5 3-4	5 5-8
May	1615	26.25	25.50	5 3-4	5 3-4
June	1435	28.625	25.75	5 3-4	5 3-4
July	660	29.00	27.30	5 3-4	5 3-4
August	938	29.00	28.00	6	5 13-16
September	631	28.25	25.50	6	5 15-16
October	731	26.375	24.75	5 15-16	5 7-8
November	499	24.75	23.50	5 15-16	5 13-16
December	1542	24.00	20.75	5 13-16	5 5-8

GAMBIER (NOT INCLUDING CUBE)

1905	PURCHASED	PRICE PER PICUL		LONDON PRICE PER HUNDRED-WEIGHT	
		TONS	HIGH	LOW	HIGH
MONTH					LOW
January	2557	\$ 9.30	8.75	5 20	5 19 6
February	882	9.125	8.75	20	19 6
March	2609	9.00	8.75	19 9	19 3
April	1704	9.00	8.60	19 3	19
May	3530	8.85	8.575	19	18 9
June	1959	8.75	8.60	18 9	18 9
July	2189	9.00	8.65	18 9	18 9
August	2312	9.00	8.50	19 9	19 6
September	2420	8.75	8.575	19 9	19 9
October	3262	8.45	7.875	19 9	19 9
November	3205	8.10	7.875	20 3	19 9
December	3973	8.00	7.70	20	20

ant items in the Straits Settlements' export trade, had weak markets during the period of the appreciation of the dollar; and this fact, accompanied by a strong competition among the producers of these articles, has resulted in declining dollar prices and the imposing of the burden of the rise in exchange upon the exporter and the producer. The above tables, which give the prices of certain articles of Singapore trade month by month in 1905, will support these conclusions.

The supply of labor is so scarce in the Malay peninsula that the appreciation of the dollar has not yet resulted in any appre-

ciable reduction in wages among the laborers engaged in the production of articles for export.

The import trade of the Malay peninsula, aside from the transit trade, is made up of such a variety of commodities and is in the hands of so many traders, that it is impossible at this date to form any very definite opinion as to the effect upon it of the rise in exchange. As in the case of the export trade, different articles have been affected differently, according to the conditions of their respective markets and the relative strength of the various parties in the trade. It may be safely said that the import trade received nothing like the stimulus that would naturally have been expected from such a decided rise in exchange, and this for at least two reasons: (1) the unsettled condition of all kinds of business while the currency reform was in progress and, in particular, the unwillingness of merchants to replete their stocks; and (2) the neglect of normal legitimate business on the part of business men for the purpose of engaging in exchange speculation.

The business of the Straits Settlements during the year can hardly be said to have been slack; it was, on the contrary, at least during the eight months ending January 31, 1906, active and exciting, and the volume of transactions was large; but this activity was principally confined to transactions either purely or largely of a speculative character, and if such transactions are eliminated, it may be safely said that business in the Straits during the period of appreciation was bad. This I found to be the general opinion among merchants of the colony. The Singapore correspondent of the *London Times* summed up the situation in his letter of December 1, 1905, by saying: "Not for fifteen years has this colony experienced such bad times, and even now signs of a revival are by no means hopeful."¹

There is perhaps no consideration of more vital importance in any currency reform than that of its effect upon existing debts. A debtor borrows purchasing power in the form of money and, in an ideal system, he would pay back the same

¹ *The [London] Times, Financial and Commercial Supplement*, January 22, 1906, p. 41.

purchasing power with interest, except to the extent that prices may have been modified in the interim by factors affecting the production of commodities, such as improved methods, exhaustion of natural supplies and the like, in which cases the amounts repaid should be so altered that the gains or losses thus arising should be equitably shared between debtor and creditor. While such an ideal system is of course unattainable in practice, currency systems should be so framed as to approach the ideal as nearly as practicable. A rapidly depreciating currency works a grave injustice to the creditor class; a rapidly appreciating currency works an even more serious injustice to the debtor class. The bimetallic controversy which has stirred up three continents for upwards of a quarter of a century found its *raison d'être* very largely in the injustice to the debtor class resulting from a monetary régime in which the unit of value appreciated by something like 44 per cent¹ in the twenty-five years, 1873–1897.

In the light of these familiar principles let us look at the recent experience of the Straits Settlements. The following figures will show in a general way the appreciation of the dollar as compared with gold during the past four years:²

THE APPRECIATION OF THE DOLLAR IN ITS RELATION TO CERTAIN STERLING RATES

	STERLING TELEGRAPHIC TRANSFERS			
	HIGH	LOW	MEAN	AVERAGE
1902	d. 22 3-8	d. 18 3-8	d. 20 3-8	.....
1903	23 3-4	18 7-8	21 5-16	.....
1904	23 7-8	21 9-16	.....	22 15-16
1905				
Jan.-June.....	23 7-8	23 7-16	.....	23 5-8
July-Dec.....	26 5-8	23 13-16	.....	25 9-32

¹ The index number of the Sauerbeck tables for 1873 is 111, and for 1897 is 62.

² The average annual sterling rates of exchange in Singapore for four-months bank paper for the period 1890 to 1901, as given in the annual reports of the governor of the Straits Settlements, were as follows:

1890.....	3s. 5 1-4 d.	1894.....	2s. 2	d.	1898.....	1s. 11 1-4 d.
1891.....	3s. 3	d.	1895.....	2s. 1 1-2 d.	1899.....	1s. 11 15-16d.
1892.....	2s. 10 5-8 d.		1896.....	2s. 2 3-16d.	1900.....	2s. 10 9-16d.
1893.....	2s. 7 7-16d.		1897.....	1s. 11 15-16d.	1901.....	1s. 11 1-16d.

THE APPRECIATION OF THE DOLLAR IN ITS RELATION TO CERTAIN STERLING RATES

	PERCENTAGE INCREASE OF TWO SHILLING DOLLAR OVER				PERCENTAGE INCREASE OF TWO SHILLING FOUR PENCE DOLLAR OVER			
	HIGH	LOW	MEAN	AVERAGE	HIGH	LOW	MEAN	AVERAGE
1902	7.3	30.6	17.8	.....	25.1	52.4	37.4	.....
1903	1.1	27.2	12.6	.....	17.9	48.3	31.4	.....
1904	0.5	11.3	.....	4.6	17.3	29.8	.....	22.0
1905								
Jan.-June.....	0.5	2.4	.....	1.6	17.3	19.4	.....	18.5
July-Dec.....	-9.9 ¹	0.8	.....	-5.1 ¹	5.2	17.9	.....	10.8

A glance at the above table will show that debtors having time obligations in the old currency contracted between the years 1902 and 1906 will suffer serious injustice in being compelled to settle those obligations at par in the new dollar. Those persons who contracted debts when the sterling value of the dollar was lowest and invested the funds borrowed in gold standard countries will be the heaviest sufferers. Those who contracted obligations when the sterling value of the dollar was highest and invested the proceeds locally, and who settle their indebtedness before prices and wages become adjusted to the new unit of value, will suffer least. Between these extremes the injustice suffered will be of varying degrees. There will probably be few instances of time obligations in the Malay peninsula in which the debtor will not to some extent be deprived of his property unjustly by reason of this artificial increase in the country's unit of value.*

But, it may be asked, did not the government take the usual measures³ to provide for the equitable adjustment of such time obligations? To this question it must be answered that not only

¹ Decrease.

² In considering the extent of the appreciation of the dollar during the last four years and the injustice thereby done to the debtor class, allowance should be made for two factors which to a small degree alleviate the situation of that class: (1) Those years have been characterized by a slight depreciation of gold in the world's markets, as evidenced by standard tables of price index numbers. (2) Eliminating fluctuations in prices arising from alterations in the unit of value *per se*, the general tendency of prices has undoubtedly been upward in the Malay peninsula during this period.

³ Such measures have been taken in recent years in Samoa, Porto Rico and the

was no such action taken, but there is no evidence that it was ever considered by the Straits Settlements currency committee which recommended the plan adopted, by the governor and legislative councillors who put it into operation, or by the local chambers of commerce which rendered frequent assistance to the government by their advice and recommendations.¹

Local officials and business men attempt to justify the government's policy of inaction in this matter on a number of grounds. The following reply to the criticism above stated was made to the writer by a prominent banker in Singapore, and may be considered as fairly representative of the attitude of most local officials and business men on the subject:

No action on the part of the government for the protection of the debtor class was necessary. Time obligations were contracted in the money of the country without reference to its gold value, and should be paid dollar for dollar in the money of the country which should be legal tender when the obligations became due, regardless of any change that may have taken place in its gold value in the interim.

This argument represents an attitude which is perhaps natural to people who have been in the habit of dealing in a fluctuating

Philippines. They have received the most careful consideration in the recent discussions concerning monetary reform in Mexico and China.

The Philippine government, in its recent currency reform, passed an act for the protection of the debtor class, authorizing debtors having time obligations payable in the old currency to tender payment in the new currency at such a rate of exchange as would fairly represent the value of the old currency in terms of the new on the date the obligations should become due. In determining this rate the debtor was directed to take into account the market price of silver, exchange rates in Hong Kong and various other factors which would be expected to throw light on the gold value the old currency would have had in Manila had it continued to circulate. If the creditor refused to accept the new currency in settlement of the obligation at a rate of adjustment so determined and sought the enforcement of the original contract in any court, the law provided that, upon the establishment of the plaintiff's claim, "it shall be the duty of the court to render judgment for the plaintiff to recover as damages the lawful sum due to him, in Philippine pesos, instead of in the currency mentioned in the contract," the basis for computing the damages being the same as that previously mentioned, according to which the debtor was to compute the amount of his local currency debt in terms of Philippine currency.

¹ One of the members of the legislative council informed the writer that this subject was never discussed by that body.

currency. Even if it be admitted that persons entering into contracts for the payment of money covering a period of years knowingly assume the risks arising from natural fluctuations in the unit of value, it does not follow that they can justly be expected to bear the burdens resulting from alterations in that unit which are artificial and which they could in no manner have anticipated. In fact debtor and creditor alike have reason to expect, as a matter of justice, that if the government finds it desirable materially to alter the unit of value in which existing contracts are stated, it will at the same time see to it that debtors (in case the unit of value is raised) shall either be permitted to pay their obligations in the currency in which they were contracted, or to commute them at equitable rates in the new currency; and that creditors (in case the unit of value is lowered) shall in like manner be legally authorized to insist upon similar terms of settlement. There is no limit to the exploitation of one class for the benefit of another that governments may sanction by altering the unit of value, if in so doing they pay no regard to the equities of existing contractual relations.

The government's policy of inaction in this matter is, however, defended on other grounds of a more substantial character for which due allowance should be made in passing judgment on the course pursued. It is stated that the Straits Settlements are preëminently a trading country, as contrasted with agricultural and industrial countries, and that the number of time obligations is in consequence relatively small. This is probably true, although no figures are available showing the extent to which such time obligations exist. It must be remembered, however, that the new currency is not limited in its circulation to the Straits Settlements proper but is the money of the Federated Malay States and other dependencies as well, and that the economic activities of these dependencies are not preëminently those of trade but rather of agriculture and mining. The number of such obligations may possibly not be great in the Straits Settlements currency area as compared with other countries; but that fact can give little comfort to those who do suffer, and their number in the absolute is unquestionably large.

A further plea urged in justification of the position taken, and by far the most weighty one, consists in the statements that the debtor class in the Malay peninsula have invested their borrowings principally in that territory, and that their investments are not of a character which are greatly influenced by the sterling value of the dollar; that the two shilling four pence dollar has little more purchasing power at present within the peninsula than the old dollar possessed one, two or more years ago; and that any measure which would permit the debtor to pay his debts in a number of new dollars smaller than the number of old dollars called for in the contract would work an injustice to the creditor, in so far as he should spend the money received within the territory in which the currency circulates. This argument certainly has weight. There is no question that a law authorizing the commutation of time obligations on the basis of the gold value the British dollar would have had in the Straits Settlements, had its circulation not been discontinued, would in many cases work hardship to the creditor class. When due allowance, however, is given to this consideration, the weight of the argument appears to be in the other direction. The injustice referred to would affect those creditors only who are paid during the short period of transition while prices are being readjusted to the new unit of value, and it would not affect all of them, but only such as choose to reinvest their money in the Straits currency area during the short period before prices become readjusted. It is to be expected that this readjustment of prices will be accomplished within a comparatively short time; in fact the future prosperity of the Malay peninsula, so far as it rests on the export trade, is largely dependent upon this very contingency.

It appears, accordingly, that the Straits Settlements currency reform is being effected at the cost of a great temporary disturbance to the country's trade, both domestic and foreign, besides the permanent loss of some portion of its transit trade; and that it is working a serious injustice to the debtor class.

Without attempting to discuss the question whether it would not have been wise for the Straits to have gone immediately upon a gold basis instead of following the Indian plan, let us in-

quire whether it would not have been possible to eliminate largely the evil results so far experienced and at the same time to preserve most of the principal features of the currency committee's plan.

Although the currency committee did not state in its recommendations at what sterling par the dollar should ultimately be fixed, the public generally believed, as previously stated, that the par to be adopted would be about two shillings. It may now be said authoritatively that this was the par the currency committee had hoped would be established, and that in this hope the officials of the home country and of the colony heartily concurred. The definitive adoption of the two shilling par was postponed only because it was feared that the future course of silver might be such as to endanger the melting down of the dollars at that par. The weight and fineness of the dollar, once decided upon, seem to have been assumed to be unalterable. The silver content of the dollar was the fixed thing, so the currency committee appear to have reasoned; the unit of value was the alterable thing; this was to be adjusted to the coin, and to be fixed at such a rate as to allow a safe margin above bullion value.¹ But, one would naturally ask, why not reverse the procedure? The bullion value of token coins is largely a question of convenience. The bullion content should of course not be so small as to render the coins inconvenient to handle or to give undue encouragement to counterfeiting, nor so large as to endanger their being melted down. Within these limits, however, the bullion content of a token coin is a matter of comparative indifference. The unit of value, on the other hand is a matter of the utmost importance. Alterations in the unit of value, by their uneven effects upon the prices of various classes of commodities and upon wages, and by the derangement they cause in the relations existing between debtor and creditor, profoundly affect the whole economic structure. Variations in the value of the precious metals have frequently compelled countries to alter the weight and fineness of their coins. Within a

¹ Cf. for the attitude of Mexico on this subject, *Leyes y disposiciones relativas a la reforma monetaria* (Mexico, 1905), pp. 21-26.

short time Japan, Mexico and the Philippines have taken measures in this direction consequent on the recent high price of silver. The Straits Settlements, however, afford the only instance in recent monetary history of a material alteration in the unit of value deliberately made to meet such a contingency.

Suppose the British authorities had taken this view of the problem, what course would they have followed? In the first place they would probably have announced a two shilling par at the beginning as part of the regular scheme, although such an announcement would not have been necessary. The procedure would otherwise have been essentially the same as that actually followed down to about November or December, 1905. By that time the government had discontinued redeeming the old dollars and the work of recoinage was completed. It was at that time, moreover, clearly evident that the silver market was such as to place a two shilling dollar containing 416 grains of silver .900 fine in grave danger of the melting-pot. As soon as this fact was realized the government would have adopted the course recently adopted by Mexico, the Philippines¹ and Japan;² it would have taken measures for the immediate recoinage of the new dollars at a much smaller fine-silver content; and inasmuch as this recoinage would yield a substantial seigniorage profit, and as there would probably be some reluctance at first on the part of the public to receive the lighter weight dollar as the equivalent of the old, the government would have

¹ An act of Congress approved by the president June 23, 1906, provides that "the government of the Philippine Islands is hereby authorized, whenever in its opinion such action is desirable, . . . to change the weight and fineness of the silver coins authorized . . . and may in its discretion provide a weight and fineness proportionately less for subsidiary coins than for the standard Philippine pesos, and may also in its discretion recoin any of the existing coins of the Philippine Islands at the new weight and fineness when such coins are received into the treasury or into the gold standard fund of the Philippine Islands; *Provided*, That the weight and fineness of the silver peso to be coined in accordance with the provisions of this section shall not be reduced below seven hundred parts of pure silver to three hundred of alloy."

² "The government has promulgated the law passed by the diet last session for reducing the size of the 50 *sen* and 20 *sen* silver pieces. The 50 *sen* piece will become a little larger than the English shilling and the 20 *sen* piece will be about the size of a sixpence." Monthly Report of the Yokohama Chamber of Commerce, no. 116, pp. 3, 4.

used this profit as the nucleus of a gold reserve fund, supplementing it perhaps by a temporary draft on the security portion of the note guarantee fund and by the floating of bonds sufficient to make the reserve adequate for immediate use. The new dollars would have been made redeemable in gold or gold exchange as rapidly as they were placed in circulation, and dollars would at the same time in like manner have been offered for gold. Under such a procedure there would have been little dislocation of prices; the long period of speculation which so unsettled trade would have been largely eliminated; the status of existing contracts would not have been materially interfered with; and the country would have been firmly established on the gold standard by the autumn of 1905, with a unit of value better suited to its permanent needs than is the present one.

To the above plan, when suggested by the writer to officials and business men in the Straits Settlements, four objections were urged: (1) the difficulty of calling in the new Straits dollars which by the autumn of 1904 had become very widely scattered, many of them having gone outside of the country; (2) the expense of the recoinage; (3) the expense of establishing a reserve; (4) the danger that the public would not accept a dollar of lighter weight.

The first objection is superficial. In the autumn of 1904 the new Straits dollar was nothing more nor less than a silver standard dollar, which the government had exchanged at par for another silver standard dollar, and which carried its value with it in the silver it contained. The government had received full value for these dollars when it placed them in circulation and it would not have been a matter for government concern if some of the subsequent holders of them should not have been willing or able to exchange them for new gold standard two shilling dollars.

To the objection concerning the expense of recoinage, it may be replied that the total expense of reminting 35,372,541 Mexican and British dollars was, according to official figures, \$788,180;¹ that had the new coin suggested been made of the weight

¹ Cf. "The Reminting of Dollars in the Straits Settlements" in *Economist*, October 31, 1905, p. 1672.

and fineness, for example, of the French five franc piece (25 grams .900 fine), the government would have realized on its recoinage a net profit in dollars of about \$2,000,000, or in sterling, if the seigniorage were sold as bullion at 30*d.* per standard ounce, of about £200,000—a substantial beginning in either case for a gold reserve.

To the objection of the expense of establishing a gold reserve fund it should be said that the Straits Settlements had no public debt in the autumn of 1904;¹ that the colony was prosperous, and that the matter of the floating of a loan of a few hundred thousand pounds for an object so vital to the colony's welfare should have been considered as a mere bagatelle.

The last objection, *vis.*, that the public would have been averse to receiving a lighter weight coin, deserves more careful consideration. It will be recalled that the scheme of currency reform recommended by the Singapore chamber of commerce in August, 1897, which contemplated the use of government currency notes during the period of recoinage,² was objected to principally because of the alleged difficulty of inducing the native holders of the old dollars, especially those of the Federated Malay States, to exchange them for a paper currency with which they were not familiar. This difficulty, which appealed strongly to the Straits currency committee,³ and particularly to its chairman, Sir David Barbour, whose opinion was based principally upon his experience in India, is taken less seriously by many of the best informed business men living in the colony.⁴ The following extract from an official report is in point:

¹ The colony has since contracted a considerable debt through the seizure of the plant of the Tajong Pagar dock company.

² Cf. Straits Settlements Currency Committee, Minutes of Evidence and Appendices, pp. 107-110.

³ Cf. Straits Settlements Currency Committee, Report, p. 12.

⁴ Cf. Report of the Singapore Chamber of Commerce for the Year 1905, pp. v, vi; and The Currency: Singapore Chamber of Commerce Letter to Government, December 17, 1902, p. 5.

The consent of the home authorities was obtained in 1898 to the issue of a government note currency for the colony and the Federated Malay States, and steps were taken in that year to design and print the notes. . . . The new notes were first issued on 1st May. [The amount in circulation by July 10 was \$1,118,000, and by December 10 it was \$3,820,000.] They at once circulated freely throughout the colony and the Federated Malay States, and the amount issued was only limited by the supplies received from England.¹

These government notes at the present time have a wide circulation throughout the Malay peninsula. At the close of January, 1906, their total circulation amounted to over \$17,000,000, and they are extremely popular everywhere. This experience with government notes affords strong reason for believing that little difficulty would have been experienced in floating lighter weight silver coins.² British administration of the Straits Settlements and of the Federated Malay States has been honest and capable; this the Chinaman, the Malay and the Indian know well, and they all have the utmost confidence in the government. A lighter weight coin backed by the government and redeemable in gold or gold exchange on demand would in all probability have passed freely into circulation as rapidly as it could have been coined.

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¹ Report of the Governor of the Straits Settlements, 1899, pp. 6, 7.

² For a number of years the twenty-five gram Spanish-Filipino peso circulated throughout the Philippine Islands at par with the Mexican dollar. It was a popular coin among the Filipinos and the Chinese, and no one seemed to question its value, although the government never agreed to redeem it in Mexican dollars.

REVIEWS

The Political History of England to 1066. By THOMAS HODGKIN. Longmans, Green and Co., New York, 1906.—xxii, 528 pp.

The Political History of England, 1216-1377. By T. F. TOUT. Longmans, Green and Co., New York, 1906.—xxiv, 496 pp.

The first volume of *The Political History of England*, issued under the editorship of Messrs. Hunt and Poole, will have more than ordinary interest for the student on account of the previous historical preoccupations of the author, Dr. Thomas Hodgkin. He is the first of the many historians of this early period to approach his subject principally from the direction of Rome and the continent. An assiduous student of one important aspect of the Germanic migrations and the dissolution of the Roman empire, Dr. Hodgkin has not been able to dismiss ancient Britain and the Roman occupation with a few pages, as did Stubbs, Freeman and Green. On the contrary, he devotes upwards of one hundred pages to that portion of his field and with eminently satisfactory results. Furthermore he does not find it necessary to dwell very long on the Teutonic fatherland of the English nation : the reason for this is made apparent by his conclusion that perhaps "we should accept and glory in the term Anglo-Celt rather than Anglo-Saxon as the fitting designation of our race." Neither does our author feel it incumbent upon him to describe the "peculiar political institutions" which the Teutons had before their advent on the soil of Britain ; in other words we have left the "German forests." However, Dr. Hodgkin believes that the depression of the free *ceorl* was a part of the historical process in Anglo-Saxon times. The authority on which he bases this conclusion is not very convincing, because in the main it consists of two rather uncertain fragments of Anglo-Saxon laws which, it seems, he accepts without due caution. He assumes that the "twelve-hynde man" section, which Thorpe prints at the end of the laws of Edward and Guthrum, is older than the "North people's law," and argues that because the latter values the *ceorl* at forty shillings less than the former, there has been a decline in status. This looks sound enough, but it happens that we do not know which of the two laws is the older or whether they apply to the same part of England at different periods.

At all events Liebermann in his critical edition of the laws cuts the "twelve-hynde man" section away from the laws of Edward and Guthrum and places it, for reasons not yet assigned, among undated fragments. In view of the uncertain dating and meaning of Anglo-Saxon laws, it seems that Dr. Hodgkin has made here a generalization too large for the evidence.

Another fragment of the Teutonic theory lingers in our author's view of the Anglo-Saxon *witan*, who, he maintains, had a "powerful voice in the election of the king" (p. 232). Though in a foot-note he calls attention to the divergent views of Mr. Chadwick, he rests his conclusions largely on the language of the Chronicle. Now there are good reasons for believing that this source properly understood destroys this theory. Again and again we read in the Chronicle that a king has ascended to his ancestral throne without any mention of election, and when we do read about an "election" it is generally under such peculiar circumstances as to lead us to suspect that it did not amount to much. For example, according to the Chronicle, Cnut was "chosen" king.

There are some vague statements that will give the lay reader wrong impressions rather than help him. For example, in connection with the conversion of Northumbria our author states that the act was that of the "nation," because the king associated his *witan* with him in making the decision. This assumption that the ruling class was identical with the nation is constantly made by Freeman, Stubbs and Green; but it is now time that scholars should be more precise in their terminology. Again our author says that "though feudalism certainly was not materialized in England, the spirit that prompted it was in the air" (p. 441). Surely this statement would not enlighten our "general reader" to whom this series especially appeals.

Dr. Hodgkin's narrative is readable, accurate and well proportioned. Half of it is devoted to the story before Egbert's day; Alfred the Great gets fifty pages; Cnut and Edward the Confessor fifty more; and Anglo-Saxon legislation another fifty. While in general the volume, especially the first part, is well written, the average reader will doubtless find the quotations from the sources too long and not well enough sifted and digested by the author. The same criticism applies also to such sections of the work as deal with institutions, for example, the pages devoted to the hundred court (pp. 427-429). The portion of the book dealing with Roman Britain is decidedly the best, for it is more artistically balanced and shows a greater mastery of the materials and the problems of construction than do the other parts.

The third volume of the series, covering the period from the Great

Charter to the death of Edward III, is by Professor Tout of the University of Manchester, whom previous works and stray studies published from time to time in the *English Historical Review* have shown to be well oriented in the field allotted to him. The century and a half during which these four sovereigns ruled was filled with wars, treasons and murders, and Professor Tout has done this aspect of his subject full justice. There are more than six hundred topics given in the table of contents and over two hundred are of this grawsome sort. This was also the age in which Oxford and its colleges grew up, in which Roger Bacon wrote, the friars labored, Edward I legislated and Parliament took general form, and in which Chaucer, Langland, Froissart and Wycliffe worked or began work. Nevertheless the legislation of the English Justinian is disposed of in some ten pages ; the coming of the friars, the rise of the universities and the studies of Bacon, in thirteen pages ; and kindred topics with the same brevity. It is fair to say, however, that the author is not responsible for this historical perspective but is executing the design of the editors.

Professor Tout has done his work well ; his volume is essentially military and narrative history, accurate enough and full enough, it may be hoped, to satisfy students and general readers for many a decade. There are two maps of special value on the Welsh march and the Scotch border. The narrative is based upon the best secondary authorities and is everywhere strengthened by critical reference to sources, so that on the score of accuracy there can be no question as to its trustworthiness. There is only now and then a glimpse of tendency, as for example on page 375, where the author says that the monks in 1351 were "already getting out of touch with the national life"—a general statement difficult to prove. Owing to his constant dealing with personalities, Professor Tout, following in the wake of illustrious authorities, feels called upon to delineate characters ; and while he is as successful as other historians, one cannot help being reminded of Voltaire's famous sentence : "As for portraits of men, they are nearly all creations of fancy." Professor Tout gives the usual favorable account of Edward I, concluding that few "medieval kings had a higher sense of justice or a more strict regard to his plighted word." Now this is a literary device rather than science ; medieval kings generally did not have a very strict regard for their word where their interests were involved ; and this measuring of kings against one another without regard to the concrete circumstances in which they worked gives us little that is real or valuable. Quite another impression could be given of Edward I and yet be founded strictly on fact ; for he sought steadily to evade

the limitations imposed by the barons; he violated, as Professor Tost admits, the spirit of his oaths; and he even procured a papal bull from Rome absolving him from his promises of 1297.

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The Cambridge Modern History. Planned by the late Lord ACTON. Edited by A. W. WARD, G. W. PROTHERO and STANLEY LEATHES. Vol. IX: *Napoleon*. New York, The Macmillan Co., 1906.—xxviii, 946 pp.

The chronological limits of this new volume of a now well-known coöperative work are, on the one hand, the beginning of the Consulate in 1799 and, on the other, the close of the Congress of Vienna in 1815. It will be noted therefore that the earlier part of the career of the extraordinary man from whom the volume appropriately takes its title has already found a place among the chapters devoted to the French Revolution, where one must turn for an account of Bonaparte's rise, his first Italian and his Egyptian campaign and his supplanting of the Directory on the 19th Brumaire. The novel order in which the editors have arranged their material—the way in which they have met the eternal difficulty which besets the historical writer of reconciling the demands of chronological sequence with the temptations toward a clear topical treatment—first attracts the reader's attention. The volume opens with a survey of the internal history of France under the Consulate. This is followed by a sudden retrogression to the early years of the Tsar Paul I, as an introduction to an account of the singular conduct of that monarch in European affairs and the general pacification of Europe which shortly followed his death. After a chapter on the dependencies of France, especially Switzerland, the internal affairs of France are once more taken up and the course of events is traced down to the invasion of 1814. There follow three topical chapters: one on the codes by Mr. H. A. L. Fisher; another on the concordats and Napoleon's general relations with the papacy by Mr. Wickham-Legg; a third on "The Command of the Sea, 1803-1815," by Mr. H. W. Wilson. The three succeeding chapters cover the general history of Europe from 1805 to 1809, after which Mr. Rose discusses the Continental system from 1809 to 1814. We are then carried back to review the developments in the several French dependencies and Switzerland during the whole period covered by the volume; after which Mr. Oman appears, introduces us to Arthur Wellesley and does not leave us until that distinguished com-

mander has entered France as Wellington. The arrangement of the concluding chapters is more conventional—the Russian campaign, the war in Germany, the first restoration, the earlier sessions of the Congress of Vienna, the Hundred Days, the close of the Congress. Room is then found for an account of Great Britain and Ireland from the opening of the revolutionary wars in 1792 to their close in 1815 and for a second chapter on the changes in the British empire at large during this same period. The volume closes with a short account of Napoleon's sojourn on St. Helena and his *apologia*. This order of treatment may not be exceptionally felicitous from a literary standpoint; but few will receive their first ideas of Napoleon from this volume, and to one who is already familiar with the story the arrangement will recommend itself.

As for the contributors, there are several familiar names—those of writers who have had a hand in the preceding volumes—but the internal history of France has very properly been turned over to Professor Pariet of Nancy, while Professor Guiland of Zurich has dealt with the more general European history under the Consulate. Major-General August Keim, of the German army, describes the war of 1809; the Russian invasion has been assigned to Professor Stschepkin of Odessa, and the War of Liberation to Dr. Pflugk-Harttung, formerly professor of history at Basel. Among the English writers of approved ability, Mr. Rose, Mr. Fisher and Mr. Oman are conspicuous.

It is impossible to review such a volume in detail. The separate chapters might, it is true, be criticised, but they contain quite unimpeachable information and there is little tendency to indulge in debatable speculation. The volume is but another example of the strength and weakness of the system adopted for the whole work; and this has already been discussed in a previous issue of the POLITICAL SCIENCE QUARTERLY (vol. xviii, pp. 681 *et seq.*).

J. H. ROBINSON.

The Negro and the Nation: A History of American Slavery and Enfranchisement. By GEORGE S. MERRIAM. New York, Henry Holt & Co., 1906.—436 pp.

This book at once suggests comparison with John C. Reed's *The Brothers' War*, published last year. Both deal with the same subject, the negro influence in American history, and in both the treatment is calm and philosophical, as befits books written by men of wide reading and experience. It must be said that the earlier work is more original,

and that it suggests a more judicial temper in its author. Mr. Reed kept his attention fixed upon the negro, while Mr. Merriam allows politics to hide the colored brother most of the time. Reed treats a hackneyed subject in a new way, exhibiting new facts ; Merriam follows old and well-trodden paths to familiar conclusions. Most of his book is devoted to the political history of the controversy over the negro, and this is narrated from the ethical point of view. Though the history in this part of the book is fairly accurate, no real contribution is made to knowledge nor is the philosophy sound and convincing. To the author pro-slavery and anti-slavery are almost the only important forces in our early history ; most else seems to hinge upon these. He sees only pro-slavery forces in ante-bellum territorial expansion. In the Kansas troubles the administration side was certainly weak enough, but here it gets no sort of justice. He overlooks the fact, moreover, that the anti-slavery spirit in the South and West was less due to moral convictions than to social and economic instincts.

After showing that the North and South were politically, socially and economically unlike, he declares that secession could not be because the United States was a "nation." His political theories throughout are those of 1861-65. Secession he pronounces "anarchy," seeing only the superficial aspects of the situation and not the social and industrial forces supporting the movement. To the Southerner it was a desperate measure taken mainly to prevent social anarchy. Time has shown, of course, that the South was mistaken ; that after all, in spite of war and reconstruction, the Southerner has about all that he seceded and fought for, *vis.*, the relations between the races described by A. H. Stephens in the much misunderstood "corner-stone" speech. In assuming that Stephens's "corner stone" has been knocked out, Mr. Merriam manifests his lack of acquaintance with the practical present aspects of his subject.

On Reconstruction his views are somewhat contradictory. He condemns the radical policy, analyzes at length the shortcomings of the scalawags and carpet-baggers, and then intimates that the minority of leaderless whites might have controlled affairs, had they seen fit to make the effort, by controlling the negroes. This they certainly tried hard to do in several states, but the attempt was defeated by the radicals. Its success was clearly impossible so long as the radicals remained in power. On the "black laws," which he considers iniquitous, he follows Blaine rather than Burgess, although he cites the latter. Evidently he has read none of these laws nor any of the corresponding laws for the whites. It seems also that he is unacquainted with the substitutes of

later days. For the facts about Reconstruction Mr. Merriam accepts the testimony of the radical side and rejects that of the other side, even clearing the Ames government in Mississippi on the statements of two carpet-baggers. Following such authorities he naturally finds that most of the deviltry of Reconstruction was on the side of the whites, and that for this there was no justification. He here holds a brief for the reconstructionists. He does not understand why there should have been any fear of "negro domination" after 1876. He shows no knowledge of the manner in which the negroes have been manipulated since that eventful year. In describing the new disfranchising constitutions the objectionable temporary clauses are dealt with as permanent. In short, the entire account of political conditions in the South is superficial and shows a lack of exact information.

The best part of the book will be found in the numerous character sketches of prominent leaders in the nineteenth-century sectional controversies. Of these sketches there are about twenty—from Webster, Clay and Calhoun to Garrison and John Brown. The author's estimates are fair and judicial, in most cases sympathetic, never partisan. Mr. Merriam can understand and describe men much better than the principles they advocate.

The negro in this book is a vague sort of a person, whose main business is to cause a political situation. To "Slavery as it Was" fourteen pages are given—a curious mixture of Harriet Beecher Stowe, Kemble, Smedes, Olmstead, etc. To Mr. Merriam slavery was sinful and bad for all; freedom therefore must be the opposite. If he will only read the census volumes, he will find that the average free negro has not been as efficient as the average slave. He can learn the same thing by talking to a Black Belt planter or by going over the accounts of a plantation. It is true that the Southern white usually knows little of the upper thousandth of progressive blacks; Mr. Merriam knows only of these, and generalizes accordingly. There is little evidence of any practical knowledge of the various race problems; to Mr. Merriam there are none. Slavery is the scapegoat, and to it and to the failure of the South to hold proper views about it most complications are due. The author's views appear to be those of a man who has read much and seen little of the things about which he reads and writes. Like objections may be made to his conception of the Southern social system. Here again is the old story: aristocracy and poor whites were distinct classes in the ante-bellum system; the latter was under control of the former, and was "led into revolution," etc. Reasoning from conditions found in Boston or New Haven he finds no cause for the race separation

insisted upon in the South. More and more, he says, do the cultured representatives of both races mingle socially in the North, and he informs the South that its position in regard to social separation of the races must be modified. That there are any real difficulties in the way, any fundamental questions of race, he does not admit.

As to the general tone of the book, it may be said that while the views set forth are those of a generation ago, merely somewhat moderated in their form of statement, yet the author's judgments and expressions of opinion are remarkably free from partisan feeling. It cannot be said that he is sympathetic, for he does not understand; but the kindly intention is always evident, although at times its manifestations are irritatingly patronizing. Considering that the author so seriously endeavors to give an impartial treatment, to maintain a fair attitude, one regrets that he did not see fit to base his work upon a thorough investigation of the subject. For in these days of many books on the race problem, a writer must first be fair-minded in order to write of Southern blacks and whites, and next he ought to be a negro or a Southern white, or one who has at least seen something of these people and their ways. Interest in a problem does not qualify a person to write about it.

WALTER L. FLEMING.

WEST VIRGINIA UNIVERSITY.

La constitución de 1857 y las leyes de reforma en Mexico.
Estudio histórico-sociológico. Por RICARDO GARCÍA GRANADOS.
Mexico, Tipografía Económica, 1906.—135 pp.

Temperate and well-balanced treatises on the constitutional history of the Latin-American republics are so rare that when one appears it merits a consideration quite out of proportion to its size. Prepared in connection with the celebration of the hundredth anniversary of the birth of Benito Juarez, the present essay of Señor García, a member of the Federal Congress, deals with the most important and interesting episodes in the constitutional development of the republic of Mexico.

Beginning with a discussion of the plan of Ayutla of 1854 as the preliminary to the final overthrow of Santa Anna and the adoption of the constitution of 1857, the author proceeds to describe the political parties of the time. He emphasizes, in particular, the lack of harmony among the Liberals and the pernicious influence of the Conservatives—an influence directed by the military and the clergy to the maintenance of their exceptional privileges and to keeping the bulk of the Mexican people in an abject ignorance altogether commensurate with their material

backwardness. The work of the Constituent Congress in framing the constitution of 1857, the revolution that ensued, and the radical reform laws of 1859 which provided for the separation of church and state, the secularization of ecclesiastical property and the abolition of the religious orders, are then treated at length. The remainder of the book is given over to an examination of the political, economic, moral and intellectual results of the constitution and the reform laws, after the retirement of the French in 1867 had made it possible to put these measures into operation.

In the opinion of Señor Garcia, the chief defects of the constitution are the grant of universal suffrage to a people wholly unprepared for it and the undue subordination of the executive to the legislative branch of the government. This legal subjection of the presidency has been converted by the peculiar circumstances of the Mexican republic into a practical dictatorship which, as administered by Juarez and Diaz, has proved beneficent beyond expectation. On the other hand the exercise of universal suffrage under executive supervision and control has placed the actual management of public affairs in the hands of the educated classes. The situation thus produced by the agency of forces outside of the constitution ought to be recognized in the organic law itself, declares the author, by

vesting the rights of active citizenship exclusively in those who possess the knowledge essential for the comprehension and fulfilment of the obligations it entails; and also by amplifying the powers of the president in such a manner as will convert his virtual independence of the legislative into a legal reality [p. 125].

The facts and arguments employed in showing how the separation of church and state, with its accompanying seizure of the ecclesiastical estates, has conduced to the moral, intellectual and material advantage of Mexico, do not differ in substance from those hitherto used in France by the advocates of the same policy. The primary object in Mexico, however, seems to have been the gain of adherents to the Liberal cause by a general distribution of the church lands among a comparatively large number of persons. A secondary purpose, the establishment of peasant proprietorships, was not realized to the extent that might have been desired. While discussing this subject, also, Señor Garcia points with patriotic pride to the act of the commission of the French Chamber of Deputies in embodying in their report on the relation of church and state several of the most important articles in the Mexican law of 1859.

In the last three chapters the somewhat prolix account of the evolution since ancient times of the idea of separating the secular from the ecclesiastical in matters of public concern, and the copious comparisons drawn between the political conditions in Mexico and those in countries outside of Latin America, might have been omitted without lessening the force of the author's conclusions. Once only does Señor García allow his liberal sympathies to lead him into error; and this when he asserts that the French intervention was provoked by the clergy and the Conservatives as a final resort to save their property and privileges (p. 70). Assuredly Napoleon III needed no such provocation to call his ambitious designs into being.

WILLIAM R. SHEPHERD.

COLUMBIA UNIVERSITY.

The German Empire. By BURT ESTES HOWARD, PH.D.
New York, The Macmillan Co., 1896.—viii, 449 pp.

We have long needed a simple statement in English of German federal constitutional law, and this Mr. Burt has given us. After a brief and, it must be confessed, inadequate account of the immediate antecedents of the founding of the German empire, the author devotes a short chapter to the relations between the empire and the single states. He then takes up the "Kaiser," the "Bundesrath," the "Reichstag," "Imperial Legislation," the "Imperial Chancellor," "Citizenship under the German Empire," and the "General Organization of the Empire." There follows a chapter on "Alsace-Lorraine," which has already appeared in the POLITICAL SCIENCE QUARTERLY. The "Constitution and Imperial Finance" are treated in considerable detail, and the book closes with a long chapter on the "Armed Forces of the Empire." In an appendix an English translation of the imperial constitution is given.

It is clear that the writer is familiar with all the great works upon his subject, both historical and legal. He has chosen, however, to limit his presentation, for the most part, to a well ordered explanation of the provisions of the German constitution as commonly interpreted. He makes no effort either to place the system in its historic setting or to suggest the theoretical developments which make the work of Laband such fascinating reading; nor has he attempted to illuminate his subject by making any of the comparisons which naturally suggest themselves between the German federal constitution and our own. It is well known to all students of comparative constitutional law that

those particular traits which we have been wont to regard as essential to a successful federation were not recognized by the founders of the German constitution. There is, for example, the most startling difference between the constitutional rôle of our supreme court, which has always been properly recognized as an organic and indispensable feature of our federation, and the position of the *Reichsgericht* at Leipzig, whose part in the moulding of the constitutional law of Germany is negligible. Then there is the prerogative and duty of the *Bundesrat* to adjust internal constitutional conflicts in the several states of the union. This right, as it has been interpreted, would have been declared by the founders of our constitution to be subversive of the whole federal principle. Mr. Burt could, therefore, easily have written two volumes instead of one; but he has done well what he chose to do, and his readers may be confident that they are getting from his book the same impressions of the fundamental provisions of the constitution which they would derive from the elaborate treatises of von Rönne, Laband, Meyer, Schulze, Haenel, Zorn and the rest.

J. H. R.

La constitution juridique de l'empire colonial Britannique.

Par H. SPEYER. Paris, A. Rousseau, 1906.—viii, 337 pp.

Perhaps one of the most interesting spectacles to the student of political science is the making of a new state. Such is the phenomenon which Mr. Speyer has attempted to describe in the book before us. No one, it is true, who makes a study of the British colonial empire can fail to see the many resemblances which it bears to a federal state: but it has remained for Mr. Speyer to show how highly developed is the feeling among the people of Great Britain and her self-governing colonies in favor of some closer union; what are the organs, however rudimentary they still may be, in whose establishment this feeling has found expression; and what difficulties are likely to be encountered in the attempt to express this feeling more emphatically in the organization of still more powerful imperial governmental organs.

Notwithstanding the outburst of pan-British patriotism occasioned by the late war in South Africa, Mr. Speyer thinks that there is at present no insistent demand for a closer political union, and that "the study of the form and powers eventually to be given to a federal organization has hardly even been begun" (p. 327). Indeed, the only organs which can be said to be in any way representative of the

empire as a whole are the judicial committee of the privy council, upon which sit regularly judges appointed from the colonies, and the colonial conference, which takes place periodically and at which appear the most important public men of the self-governing colonies. At the same time, Mr. Speyer points out that the consciousness of common interests is becoming clearer to both British and colonials, and that particularly in the domain of imperial defense there is growing up a belief in the necessity of harmonious action on the part of all sections of the empire. Indeed, the committee for imperial defense established by Lord Salisbury has been reorganized by Mr. Balfour in such a way as to permit representatives of the colonies to become members of it, and such representatives have already participated in its deliberations.

Mr. Speyer's book calls attention further, in the part devoted to the consideration of the law in the colonies, to the gradual extension of the principles of the English law, which seems to tend to supplant in the colonies the law which they originally possessed. This extension has taken place, not through any action of the British Parliament, for in this matter almost absolute independence has been accorded to the colonies, but through the action of the colonial legislatures and courts themselves. In last analysis it has been due, in large degree if not entirely, to the sense of kinship and community of interest which appears to be felt by all portions of the English-speaking race. This feeling has of course become keener as a result of the fact that all parts of the empire have, notwithstanding their distance one from another, been brought close together through the enormous improvements in means of transportation and communication which were made during the last century.

Before closing this notice of Mr. Speyer's book as an exposition of the principles of imperial federation, the attention of the reader should be called to the clear and entertaining description of Mr. Chamberlain's campaign for this principle, and of his incidental although necessary attack on the doctrine of free trade which for so long a time has been so dear to the English heart.

While Mr. Speyer's book has been written with the purpose of calling the attention of the reader to the important movement for imperial federation, the fulfilment of the author's purpose has really necessitated the writing of a description of the organization and workings of the British colonial system. Furthermore, the desire of the author to treat his subject exhaustively has made necessary a very full treatment of the British colonial system from both the historical and legal points of view. The result is that, apart from its bearing on the problem of imperial

federation, the book is one of the best that we have on the British colonies. Indeed there is hardly any book which approaches it in its treatment of the legal conditions in colonial Britain. It is accordingly of value, not only to students of general political science, to whom the phenomenon of the development of a new state will be a most welcome object of study, but also to students in the narrower field of colonial problems, who can hardly fail to be enlightened by a consideration, based on the investigation of the most recent pertinent facts, of the British methods of solving these problems.

F. J. GOODNOW.

Der Bundesstaatsbegriff in den Vereinigten Staaten von Amerika, von ihrer Unabhängigkeit bis zum Kompromiss von 1850. Von ERNST MOLL. Zürich, Schulthess und Co., 1905.—209 pp.

This is a study in American constitutional law by a German scholar, consisting mainly of a review of the early theories concerning the nature of the federal union. Although brief in its compass it is done with characteristic German thoroughness, and shows evidence of wide research and a familiarity with the literature of American constitutional law rarely found in foreign treatises on American history and political institutions. It is remarkably free from the errors which often characterize the attempts of European writers to explain the constitutional relations between the union and the individual states. For these qualities it deserves high praise, although it is hardly entitled to be ranked as a distinct contribution to the subject with which it deals. It is rather a systematic presentation of the opinions of the "fathers" and of the decisions of the supreme court under the domination of Marshall, than an independent treatise on the nature of the federal union.

The author begins his study with a brief discussion of the relation between Great Britain and the American colonies, the relation of the colonies to one another and the nature of the confederation. He then reviews the origin of the constitution and explains the nature of the federal system of government created by it, giving particular emphasis to the relation of the federal and state courts, the rules of constitutional interpretation, the power of the supreme court to declare statutes unconstitutional and the right of appeal. Under the head of "Constitutional Theories" he deals mainly with the question of the location of sovereignty, basing his discussion primarily on the opinions of Madison and Hamilton, whose contributions to the *Federalist* are thoroughly

examined. He criticises Madison's theory of divided sovereignty and points out the true doctrine, that sovereignty is not divided between the national and state governments but is supreme over each (p. 71). Likewise the views of Jay, Wilson and Jefferson are reviewed at length, the doctrine of the Kentucky and Virginia resolutions is expounded, and the separatist movement in New England culminating in the Hartford convention is traced from its inception in 1804. The doctrine of Marshall and the "Massachusetts school" represented by Webster is compared with that of the "Virginia school" represented by Henry, Mason, Randolph and the two St. George Tuckers, the "precursors" of Calhoun, whose political philosophy constitutes the final chapter of the monograph. About one-half of the work is given up to critical and bibliographical notes. Apparently nothing of value in the immense mass of literature relating to the subject has escaped the author's notice.

J. W. GARNER.

UNIVERSITY OF ILLINOIS.

Les droits législatifs du président des États-Unis d'Amérique.
By HENRI BOSC. Paris, A. Rousseau, 1906.—viii, 284 pp.

No one who has followed closely the course of Congressional legislation in recent years can be ignorant of the increasing activity and influence of the president in this field. This careful analysis of the legislative powers of the president comes therefore at an opportune moment; and the fact that the author is a foreign student of American institutions helps to free the work from any political bias.

In two respects, however, the conditions under which the book has been prepared and published prevent it from being an entirely adequate discussion. It is obvious that the writer has not had the advantage of personal observation and investigation in this country, but has had to depend on materials available on the other side of the Atlantic, supplemented by some correspondence with Americans. And the date of publication, at the beginning of the present year, precedes the exciting and significant events of the last session of Congress. Nevertheless it is a valuable study of the situation up to the time of its publication, and shows clearly the tendencies of which later events have been but further developments.

The work falls into three main divisions. An introduction considers the principle of the separation of the powers of government, with special reference to the constitutional powers of the president and the dis-

cussions in the Constitutional Convention of 1787. In the body of the treatise, a first part treats of the positive authority of the president in the work of legislation; and a second part discusses his negative authority or veto power.

In the greater part of the book the author is traversing ground that has been covered by previous writers. Yet even here he has performed a service in bringing together what has been said on various aspects of this subject and in comparing and criticising conflicting views. And his conclusions show a rather remarkable grasp of the points at issue. His discussion of the veto power is based mainly on Mr. Mason's monograph, and there is an abrupt cessation of comment on the exercise of the power since Cleveland's first term. A careful study of the later history would show a marked decline in the exercise of the veto, associated with the development of the positive influence of the president.

Much the most important contribution in the book is chapter 3 of part one, in which Mr. Bosc discusses the actual influence of the president on legislation. Here one feels the lack of concrete information; and his statement of conditions under Presidents Cleveland and McKinley is hardly satisfactory. Of more recent conditions, under President Roosevelt, he is better informed. And his conclusion, based largely on statements from American correspondents, is in the main correct—that an energetic president, backed by public opinion, can and does make himself a powerful positive force in the work of legislation.

There remains, however, room for a more thorough investigation of this subject, both in its earlier phases and in the latest developments, as illustrated in the course of the railroad rate and meat inspection bills of 1906.

Mr. Bosc also gives one chapter to a discussion of the Pendleton bill of 1881, which proposed to admit members of the president's cabinet to the house of Congress, in order to answer questions and take part in discussions, but without a vote. He reaches the conclusion that if this change were made, it would tend in time to establish the English system of a cabinet responsible to the legislature. But in this he seems to have overlooked the experience of Germany, where both in the empire and in the states the ministers have seats in the legislatures without having been made responsible to these bodies.

JOHN A. FAIRLIE.

UNIVERSITY OF MICHIGAN.

Money and Currency in Relation to Industry, Prices and the Rate of Interest. By JOSEPH FRENCH JOHNSON. Boston, Ginn and Co., 1906.—398 pp.

One is apt, in these days, to approach a new treatise on money with a feeling of satiety. One wonders whether books upon the subject, like money itself, are not growing redundant and likely to depreciate. One foresees the familiar description of the barter régime, the traditional analysis of the functions of money, hopelessly prolonged catalogues of its primitive forms, the by now almost stereotyped illustrations of "Gresham's law" and the usual story of the bimetallic debate told with a bias one way or the other. Approaching a new book upon this oft-tried theme with such anticipations, one is apt to open it with little curiosity beyond that of discovering toward which point of view the author's prejudices incline.

To such money-sated readers it may be said at once that the present work will afford at many points a grateful relief. The author has exhibited on the whole a wise sense of proportion. He has avoided in general the elaboration of familiar elementary details; he has used the historical and descriptive matter discriminately for the exemplification of principles; and, while restricting the space devoted to the more threadbare subjects, he has put new emphasis upon certain of the larger relationships of money that are less often analyzed. There are few references and scarcely any quotations, and no attempt is made to trace the origin or authorship of any of the principles discussed; all of which is just as well in view of the vast dimensions that monetary literature has attained.

The author must be credited, too, with a freedom from controversial animus all too rare in discussions of this subject. One misses here the rhetorical analogies, the *reductio ad absurdum* and the other modes of ironical rejoinder, which have given to many treatises upon money a more entertaining form and a less judicial substance. Such traditionally turbid and provocative subjects as bimetallism and the relations of the money supply to the volume of credit and to the level of prices are subjected here to the driest kind of analysis. The author's temper is as unpartisan as his style is unbrilliant.

Professor Johnson has aimed in the volume before us to present "a complete exposition of the science of money," making principles "more conspicuous than the facts of coinage and legislation"; and he has achieved no mean success in compressing within the limits of four hundred pages some discussion of almost every question of monetary

theory that has arisen. He will be commended by many for handling these questions in the language of everyday life, rather than in the esoteric phraseology of the schools. Even so common a phrase as that of "marginal utility" he has relegated to the innocuous obscurity of a footnote. Many will congratulate themselves on being spared the formulas of higher mathematics which usually abound, and will wonder why the author did not also omit the illustrative diagrams (pp. 29, 31, 141, 151, 267). However illuminative such pictured arguments may be to their constructor, they seldom convey any idea to the reader which could not be more clearly expressed in words.

At the same time objection is likely to be raised by the trained economist to the casual employment of technical phrases in senses at variance with accepted usage. Take such an expression as "commodity standard," which in economic books has come to refer to a currency standard that has a stable value in exchange for commodities. Professor Johnson detaches this term altogether from its established connection and applies it to any monetary standard which has an independent value as a commodity, irrespective of the stability of that value. In this sense gold is always a "commodity standard," regardless of its depreciation or appreciation (p. 174). Or take the phrase "forced circulation," which has long been used in English works on money (and likewise, in an equivalent form, in German and French works) in referring to an irredeemable currency. Our author apparently uses the phrase to designate any kind of fiduciary currency which has been made legal tender, whether the currency is convertible or not (p. 319). Again, one would certainly not expect a divergence of usage in the case of so technical a phrase as the "limping standard." The appellation has hitherto been applied to a monetary system under which only one metal is freely coined, while both metals are endowed with unrestricted legal tender power, but to Professor Johnson it apparently means something different. He alludes to the United States as having passed from a limping standard in 1890 (p. 347), impliedly because of the adoption of the so-called "parity clause" in the Sherman act of that year (p. 355). The United States, he tells us, "has definitely placed herself upon a gold basis, but Germany and France are still upon a limping standard" (p. 349). Inasmuch as Germany has now retired virtually all of her full legal tender silver while the United States retains something like five hundred and sixty million dollars of it, the statement would accord better with the facts if it were directly reversed, *i. e.*, if the words Germany and the United States were interchanged. Such verbal eccentricities, other examples of

which might be mentioned, only promote confusion and should be remedied in the future editions which are likely to be demanded.

Among the descriptive and historical statements a number of other than verbal inaccuracies may be detected. We read, for example, that England established bimetallism in 1666 (p. 237), yet we know that the two metals had been freely (although not gratuitously) coined during the greater part of three centuries before that date. We are told that "England changed the coinage ratio between gold and silver several times during the eighteenth century" (p. 239), whereas the only change in the official rating of the two metals during the entire century was that of 1717. And again, turning to another field, we are informed that the national bank notes in the United States are legal tender "in payments to the government and from the government to individuals" (p. 337), yet strictly speaking neither one of these statements is true, for the notes are not accepted by the government in payment of customs dues, nor can they be forcibly offered by the government, since the government is bound to redeem them. The principal defect in the book is its unsteadiness with regard to facts.

Several of the author's interpretations of monetary experiences are similarly open to criticism. In speaking of the Bank of England notes under the so-called restriction act, the author attributes the fluctuation in their gold value exclusively to changes in their amount (p. 292). It is well known, however, having been pointed out by Tooke among others, that the rating of these notes often moved in directions quite at variance with the changes in their quantity, rising as the quantity increased and falling as it decreased. As a matter of fact, the rating of the notes followed much more closely the changing course of England's fortune during the Napoleonic wars than the fluctuations in the amount of the notes outstanding.

Many will dispute the author's analysis of the events in America incident to the crisis of 1893. The gold exports of the period just before are not to be explained simply as a result of rising prices induced by the issues of the Sherman act (p. 319), nor can the drain in the years just following be attributed altogether to redundant cash which "by raising our price level above that of Europe caused a steady export movement of gold" (p. 356).

Fortunately the larger issues of the book do not depend essentially upon these illustrative details, and criticism of such details must not obscure its really significant achievements in the field of monetary theory. The opening chapters present what to the present reviewer seems an excellent and in the main sound analysis of the influences

which affect the value of money. Among these influences Professor Johnson does not hesitate, after the prevailing fashion, to emphasize the importance of changes in the money supply; nor does he minimize, as some have done, the significance of credit as a price-controlling factor. We congratulate him for not endeavoring to be original at the expense of proportion and perspective. Another chapter contains an unusually fresh discussion of domestic and foreign exchange, in which the latter is treated, as it should be but rarely is, as merely a development of the former. There are sensible and well constructed chapters upon bimetallism, fiat money, credit money (meaning the convertible fiduciary forms) and upon the history of money in the United States; and there are suggestive if summary discussions of a wide variety of other subjects, such as index numbers, currency elasticity and proposals for currency reform. In a brief but fresh analysis of the effects of a seigniorage, Professor Johnson is among the first to call attention in print to the fallacy in the common assumption that the levying of a seigniorage will always cause prices to rise. He shows that this is not apt to occur under conditions of free coinage. Even supposing that the coins were debased ten per cent and that the government coined and issued all of the bullion presented to the mint, he concludes that prices would not rise, because "any tendency on the part of money to fall in value would be instantly checked by the cessation of coinage, since men would not take bullion to the mint unless it was worth ten per cent more when coined than when uncoined" (p. 189). This fact singularly enough has generally gone unobserved by writers upon money.

The chapters which are most characteristic and which will probably prove most widely interesting are those which discuss the influence of changes in the value of money upon business. Throughout the book this theme is the subject of ever-recurring emphasis. Professor Johnson is not one of those who regard money as an almost negligible lubricant in the economic mechanism. To him it is a dynamic factor, capable of exercising great influence upon production and distribution. The prosperity or decline of general industry, the very welfare of the country, he believes to be subject to its control. In the chapters upon "The Relation of Money and Credit to the Rate of Interest" and upon "The Importance of Price," interest and wages and profits are shown to be powerfully although often insidiously affected by changes in the value of the standard. Some may perhaps feel that the effects of appreciation and depreciation are rather magnified, but the analysis is certainly full of suggestion and well worthy of the unusually large measure of attention that it here receives.

Professor Johnson's book is a welcome addition to the voluminous literature of money, and with its errors of detail eliminated it will without doubt take rank among the best of the general works upon the subject.

A. PIATT ANDREW.

HARVARD UNIVERSITY.

The Wisdom of the Wise. By W. CUNNINGHAM. Cambridge, at the University Press, 1906.—125 pp.

British Imperialism and Commercial Supremacy. By VICTOR BÉRARD. Translated by H. W. FOSKETT. London, Longmans, Green & Co., 1906.—x, 298 pp.

The two books under review represent, as it were, an aftermath of the recent harvest of British tariff reform literature. The evidence on both sides of the question is already in. What has remained for these two writers is chiefly passionate reiteration of personal conviction. Dr. Cunningham, in spite of the check given to imperialistic tendencies by the recent election, holds firmly to his belief in the beneficence of an imperial *Zollverein* and in its ultimate realization. M. Bérard, a French Liberal, is no less positive in his view that the scheme of a Pan-Britannic commercial union must encounter insuperable obstacles: even if realized, he believes, it could do little to check the decline of England.

What moved Dr. Cunningham to the publication of the lectures contained in *The Wisdom of the Wise* was the seemingly illogical reasoning of the free-trade imperialists, Mr. Haldane and Lord Rosebery, and the presumption of the Fourteen Professors, who in 1903 pretended, in behalf of economic science, to pronounce judgment against tariff reform. These are the "wise," the futility of whose wisdom Dr. Cunningham proposes to lay bare. The first chapter, devoted mainly to Mr. Haldane, is a eulogy upon the classical economists, who dealt in pure abstractions and did not imagine that they were specially qualified to speak upon practical questions. They were therefore strictly scientific in their procedure, as contrasted with the degenerate race of present-day economists who presume to meddle with practical affairs.

In his second chapter our author reiterates the thesis of Seeley, that expansion, imperialism, is a very old tendency of the British people—the key to the interpretation of British history—and therefore in a sense too sacred for criticism. Not content with this justification of imperialism he attempts to illustrate its advantages by means of an analogy. He

suggests that just as the American trust, without appreciable injury to the public, is able to escape the costs of competition, so by imperial organization the wastes of racial competition may be avoided. Exactly what the economies to be gained through imperial federation may be, Dr. Cunningham fails to say.

The third chapter has the merit of advancing a new argument for imperialism : that it will do away with the evils of unemployment. It is pointed out that in early modern times, when unemployment, resulting from enclosures, threatened the peace and prosperity of the nation, a systematic reorganization of industry upon national instead of local lines was effected. After that the problem of unemployment disappeared. Why, then, should not the modern problem be solved by a reorganization of industry upon imperial lines? I fancy that the Little Englander may raise the objection that British industry is already organized on international lines, and that a restriction of commercial and industrial relations through a customs war between the British empire and the world would hardly serve to stimulate British trade.

The two remaining chapters of the book have little to do with the fiscal question. The first attempts to show that we have too much religious liberty ; the second, that Cromwell was not an imperialist.

M. Bérard wrote his work for French readers, as he explains in an apologetic preface to the English translation. Accordingly it contains some expressions "un peu vives" which he rightly fears may cause the English reader to doubt the reality of his admiration for England, "mère des Parlements, et source des grandes vérités radicales." The book is in large measure a comparison of England and Germany, and the nature of the comparison may be inferred from the following sentences—which, by the way, have acquired through the translation a humorous quality which was absent from the original :

The gaping rents made in British supremacy may be repaired, and in her patched mantle of imperial purple Britannia may still make a bold show; but humanity has lost confidence and turns away from this failing greatness. Amid cannons' roar and trumpets' blare, amid songs and toasts, the Germany of Kant, of Bismarck and of Wagner, rational Germany, mighty and creative, sits astride the twentieth century [p. 295].

M. Bérard's book is based partly upon the results of personal investigations of British industry, but chiefly upon the Cassandra literature of the Blue Books and the British consular reports. Its chief conclusion is that British industrial supremacy is a thing of the past. The present is an age of science, and the Briton despises science. Eng-

lish education and English life produce only "admirable animals, men accustomed to every form of luxury and frequenters of every social function, whose fine development of muscle and constitution is undeniable, but whose intrinsic value is quite out of proportion to their cost of maintenance" (p. 281). A coldly scientific discussion of the practical difficulties involved in creating a unified British empire is as foreign to the spirit of M. Bérard as to that of Dr. Cunningham. M. Bérard believes that no practical plan of organization can be found; Dr. Cunningham believes that the indomitable will of the Anglo-Saxons will find the means necessary to the achievement of its purposes. Both books are suggestive and entertaining; neither possesses any high degree of scientific merit.

ALVIN S. JOHNSON.

UNIVERSITY OF NEBRASKA.

Miscellaneous Essays and Addresses. By HENRY SIDGWICK.
London, Macmillan and Co., 1904.—viii, 374 pp.

Nothing could better illustrate the breadth and versatility of the late philosopher-economist, Henry Sidgwick, than this posthumously published volume of *Essays and Addresses*. The papers which it contains are classified under three broad divisions: literature, economics and sociology, and education. Under the head of literature are a scholarly criticism of Seeley's *Ecce Homo*; a broadly humanitarian, and therefore not altogether favorable, appreciation of "The Prophet of Culture," Matthew Arnold; and essays on the works of Arthur Hugh Clough and on certain phases of Shakespeare's art. In these papers the reader is given excellent examples of the lighter side of the author's work.

Under the head of economics and sociology may be placed a youthful essay on "Alexis de Tocqueville," a discriminating study of "Bentham and Benthamism in Politics and Ethics," an address on "The Scope and Method of Economic Science," and articles on "Economic Socialism," on "The Economic Lessons of Socialism," on "Political Prophecy and Sociology" and on "The Relations of Ethics to Sociology." Together these papers may well serve as a record of the stage of development to which the social sciences had attained in England at the close of the nineteenth century. As an economist Sidgwick, even more than Marshall, felt the influence of the socialistic movement of which he often speaks in these pages. While he does not go so far as did Mill in his later years, he still discusses sympathetically the claims and

aspirations of socialism and shows that many of the changes which are commonly thought of as socialistic are really in harmony with the teachings of "orthodox" economics. Here as everywhere his attitude is broadly tolerant. He is eager to see the best in every new proposal and never dogmatic in the assertion of his own opinions.

His attitude towards sociology is that of an interested observer rather than of a convert. He contrasts with telling effect the views confidently advanced by the great system-makers of the science in France, England and Germany—Comte, Spencer and Schäffle—and shows the futility of abandoning the cultivation of economics as a separate science, as had been advocated by Cliffe-Leslie, before sociology has ceased to be speculative and become in a true sense "positive." Finally, in an admirable criticism of two books of very unequal merit, Pearson's *National Life and Character* and Kidd's *Social Evolution*, he shows how far we still are from being able to prophesy in regard to coming social changes. His characterization of the method of would-be social prophets is too apt not to be repeated :

In order to induce the world to accept any change that they may desire, they endeavor to show that the whole course of history has been preparing the way for it—whether "it" is the reconciliation of science and religion or the complete realization of democracy or the fuller perfection of individualism or the final triumph of collectivism. The vast aggregate of past events—many of them half-known and more half-understood—which makes up what we call history, affords a malleable material for the application of this procedure: by judicious selection and well-arranged emphasis, by ignoring inconvenient facts and by filling the gaps of knowledge with convenient conjectures, it is astonishing how easy it is plausibly to represent any desired result as the last inevitable outcome of the operation of the laws of social development.

The educational essays in the volume—"The Theory of Classical Education," "Idle Fellowships," "A Lecture against Lecturing," and "The Pursuit of Culture as an Ideal"—are quite as valuable in their way as those on literature and the social sciences. Although first published in 1890 the "Lecture against Lecturing" finds the mediæval practices of which it complains still nearly as prevalent as when it appeared. In brief the author's contention is that in this age of cheap printing there is seldom any valid reason for the perpetuation of the formal lecture method of instruction. The matter to be taught should, he thinks, be made available in print and the time of teacher and class should be given entirely, or almost entirely, to questions and discussions

on what has already been read. These views, which the present writer fully shares, are all the more interesting because they come from one who not only was a lecturer by profession but will long be remembered at Cambridge as one of the most finished academic lecturers of his day.

Space has permitted little more than an enumeration of the titles of the papers in this volume, but it would give the reader an entirely inadequate notion of its value to close without saying something of the charm of the author's style. His literary touch is as light as his thought is often profound. Always earnest, he yet possesses the gift of imparting a flavor of humor to his treatment of the most serious topics. Thus the reader is carried along even through an abstruse discussion without being made aware of the mental effort he is putting forth. In fact so admirable is the form of these *Essays and Addresses* that it is scarcely too much to say that they merited republication as models of style quite apart from the undoubted timeliness of nearly every one of the discussions which they contain.

HENRY R. SEAGER.

Studies in American Trades-Unionism. By J. H. HOLLANDER and G. E. BARNETT. New York, Henry Holt and Co., 1906.—380 pp.

This collection of essays must be judged from the standpoint of two sciences—pedagogy and economics. It is the second publication of the economic seminary of Johns Hopkins University, the first being the valuable *Trial Bibliography of American Trade-Union Publications*. In the introductory chapters to the present volume, Mr. Hollander states briefly the pedagogical plan. The economic investigator in the seminary has limited himself to "economic microscopics," and has refrained from attempting comprehensive induction, partly by reason of his extreme *Historismus* and partly because of the vast area of the data. Neither governmental agencies nor independent investigators have sufficed to give us the needed material for the extensive or experimental induction of the physical scientist. In lieu of these the economic laboratory of the American university must be the prime factor in economic research. This includes the teaching staff, the students in residence, affiliated workers, and, most of all, it includes "investigation funds" which shall enable these investigators to travel. The editors have been fortunate, through the generosity of a friend and a grant from the Carnegie Institution, in securing these funds; and in the course of the two years' preparation of this volume they and their stu-

dents have scoured the trade-union field. This field was selected partly because it was necessary to work in a limited department of economic research in order to have both the unity and variety required for the comparative method of group investigation, and partly because labor problems are the dominant economic concern of the American people.

It is to be feared that the latter consideration has led the editors to premature publication of their students' work. As a pedagogical device for training students in research the plan is incomparable. Each member of the seminar is assigned a topic which he is to investigate comparatively in the leading trade unions. But the present volume contains only a part of the results and marks "a stage, not a goal," in the inquiry. It presents us with selections of particular unions to illustrate the several topics. This illustrative material might be important and significant if the student who investigates each group of unions knew enough of other unions to be able to bring out the points of comparison. As it is, the book has the defects of unrelated amateur recital of events without the gains of the co-operative method which the editors have so successfully practiced. These defects are fully shown if one compares the chapter on the "Finances of the Iron Moulders' Union," by Mr. Sakolski, with the excellent monograph completed two years later by the same writer, entitled *The Finances of American Trade Unions*.

The other horn of the dilemma is found in the chapters in which the students have attempted a moderate amount of generalization, as in the chapter on the minimum wage in the machinists' union, and in those on apprenticeship and trade-union rules in the building trades. It is much more difficult for students to deal with such subjects than to investigate the structure and finances of particular unions, because in the latter class of subjects the data are taken from a single official source, and there is no demand for inferences, comparisons, weighing of evidence or discussion of the merits of this or that policy. It is different in the more economic and industrial topics. Here either the generalizations follow simple and self-evident clues, or important factors are overlooked or poorly weighed, and economic inferences or summary judgments are drawn from only a part of the great field of complicated data. While the chapters give promise of excellent work and fully justify the pedagogical plan, we must look for the real contributions to economic science and labor problems in the further inquiries of the investigators.

JOHN R. CO

UNIVERSITY OF WISCONSIN.

The Secret of the Totem. By ANDREW LANG. London and New York, Longmans, Green and Co., 1905.—x, 215 pp.

Mr. Andrew Lang's position among students of social origins is, like his position in literature, essentially that of the critic, although he has contributed not a few bits of constructive theory to our sociological philosophy and obviously desires to be recognized as a scientific investigator. His books are all deserving of serious consideration, and whether as discoverer or as critic his intrusion into any new field compels respectful attention and some re-arrangement of our provisionally accepted conclusions:

Mr. Lang is at present the principal champion of what may be called the Darwinian view of primitive domestic relations, in opposition to the theories of polyandry or promiscuity. In his volume on *Social Origins and Primal Law*, he gave to the public, with an elaborate introduction of his own, the valuable observations of Mr. J. J. Atkinson in Australia. These observations seem to bear out Mr. Darwin's theory that primitive man, like the ape, was a jealous animal, and that the sire in each group, expelling adolescent male offspring from the band, kept his female mates to himself. From this practice Mr. Atkinson and Mr. Lang undertook to deduce the whole system of "avoidances" between kinsfolk in savage society. I have elsewhere pointed out¹ that such an expulsion of weaker males as Lang and Atkinson assume would in reality lead to polyandry as often as to polygyny, inasmuch as the banished males would provide themselves with stolen females to be shared in common. This curious oversight of obvious possibilities on the part of Mr. Lang is a good illustration of his scientific limitations. What he sees he sees so clearly that his vision becomes fixed upon that bit of truth only.

This defect is conspicuous in his present study of totemism. It is highly probable that Garcilasso de la Vega's theory of the origin of totemism, which Mr. Lang accepts and elaborates, contains a large measure of truth. It assumes that totemism arose in the early efforts of human groups to differentiate each from the others. But when this theory is developed into an explanation of savage culture and social organization in terms of nicknaming and is pushed so far as to become an attack all along the line upon the work of Frazer, of Howitt and of Spencer and Gillen, it ceases to be in all points convincing.

F. H. G.

¹ Descriptive and Historical Sociology, pp. 450, 451.

RECORD OF POLITICAL EVENTS.

[From May 1, 1906, to November 6, 1906.]

I. INTERNATIONAL RELATIONS.

AMERICAN INTERVENTION IN CUBA.—In the middle of August a rebellion broke out in Cuba against the Palma administration (see *LATIN AMERICA*). The movement spread with such rapidity and became so formidable that on September 8 President Palma, feeling himself unable to protect life and property, requested through Consul-General Steinhardt that the United States intervene under the Platt amendment and send two war vessels, one to Havana and the other to Cienfuegos. Although averse to acting until the Cuban authorities had exhausted every effort to put down the insurrection, the government at Washington sent the vessels, but at the same time urged that the Palma government come to a working agreement which would secure peace with the insurrectos, provided the government was unable to hold its own with them in the field. "Until such efforts have been made," ran a dispatch of September 10, "we are not prepared to consider the question of intervention at all." Nevertheless, the Cuban government continued to ask urgently for aid. On the 10th, after a conference between President Palma, American Chargé d'Affaires Sleeper, and Commander Colwell of the United States vessel "Denver," a detachment of 120 men, armed with rifles and machine guns, were landed in Havana; but as this action had been taken without consulting Washington, orders were transmitted for the men to reembark. The situation was so serious, however, that on the 14th President Roosevelt directed Secretary of War Taft and Acting-Secretary of State Bacon to proceed to Cuba, to make a thorough investigation and to render such aid as might be necessary to bring about an immediate cessation of hostilities and the permanent pacification of the island. On the same day the president addressed a long and well-considered letter to Señor Quesada, the Cuban minister at Washington, in which, after expressing the sincere interest he felt in the welfare of the island, he solemnly adjured Cuban patriots to sink all differences and ambitions and to remember that the only way they could preserve the independence of their republic was to prevent the necessity of outside interference. At the same time he made clear his imperative duty to secure a cessation of hostilities and the restoration of peace and order. On the 16th an armistice was proclaimed by the Cubans, and two days later Messrs. Taft and Bacon arrived at Havana and began to investigate the situation. Many propositions for a peaceful settlement were considered without avail, and on September 28 President Palma and Vice-President Capote brought

matters to a crisis by tendering their resignations to a special session of the Cuban Congress. Convinced that it was impossible to bring about any kind of reasonable compromise between the factions, Mr. Taft, following instructions from Washington, on the 29th issued a proclamation taking temporary control of the island under authority of the United States, with the declared purpose of restoring order, protecting life and property and establishing permanent peace. In this proclamation he expressly stated, however, that "the provisional government hereby established will be maintained only long enough to restore order, peace and public confidence, by direction of and in the name of the president of the United States, and then to hold such elections as may be necessary to determine on those persons upon whom the permanent government of the republic should be devolved." Thanks largely to Mr. Taft's skill and tact, no resistance to American occupancy was offered by either faction. A disarmament commission was at once formed, with General Frederick Funston at its head, which included representatives from both the Cuban government and the insurgents. Marines were landed at Havana and Cienfuegos, and as soon as possible a force of about six thousand regulars was dispatched to the island. On October 9 Governor Taft issued a proclamation of amnesty covering all offenses committed by the insurgents. Four days later Messrs. Taft and Bacon left Havana amid cheers from the people, and Charles E. Magoon, until recently governor of the Panama Canal zone, took charge of the island as provisional civil governor.

OTHER AMERICAN INTERNATIONAL RELATIONS.—Next to the intervention in Cuba the most interesting international event during the past six months has been the meeting of the Pan American Conference at Rio Janeiro (see last RECORD, p. 357). The United States and all the Latin American states except Haiti and Venezuela were represented. The first meeting of the conference occurred on July 23. Señor Joaquin Nabuco, Brazilian ambassador to the United States, was chosen permanent president. On the 27th Secretary of State Root arrived at Rio on board the United States cruiser "Charleston" and was enthusiastically received. In a speech delivered on the 31st he set forth his views concerning the function of the congress, which, he said, should be to secure a policy of mutual aid among the American republics. He also disclaimed any desire on the part of the United States to adopt a policy of aggression toward her neighbors, and appealed to the congress "to create, maintain and render effective a purely American public opinion, the power of which would influence international policy, prevent international disagreement, limit the causes of war and forever preserve our territories from the burden of armaments accumulated behind the frontiers of Europe and bring us ever nearer to perfection and to true liberty." Early in August the congress unanimously adopted a resolution which recommended that the American republics should instruct their delegates to the second Hague Conference to endeavor to secure the adoption by the conference of an arbitration convention worthy of accept-

ance and enforcement by every nation. Among the subjects most fully discussed was the so-called Calvo or Drago doctrine "that there should be no diplomatic or military interference of one nation with another for the purpose of enabling private persons or corporations to collect debts from those of another country." This doctrine was approved by the congress and was unanimously referred by it to the consideration of the Hague tribunal. Among other measures, the conference adopted a resolution presented by Mr. Buchanan, head of the American delegation, providing that the countries represented should prepare statistical tables showing the monetary fluctuations of the last twenty years.—Mr. Root left Brazil early in August and subsequently visited the capitals of Uruguay, Argentina, Chile and Peru. In various speeches he emphasized the importance of adherence by the Americans to the Monroe doctrine, and it is believed that his visits have done much to remove old prejudices and to improve the relations between the United States and the South American states.—The revolt which began in Guatemala in May (see *LATIN AMERICA*) resulted in serious international complications in Central America. On the ground that San Salvador was assisting the rebels, Guatemala declared war upon that state. Later, a force of Guatamalans having crossed the border into Honduras, this state also became involved in the conflict. After several sanguinary battles had been fought, the United States and Mexico tendered their good offices, and a meeting of representatives of the belligerents was arranged to take place on the United States cruiser "Marblehead." The first meeting occurred on July 18. Our chargé d'affaires and the Mexican minister to Central America acted as arbitrators, and on the 20th the belligerents agreed to a treaty which provided for the establishment of peace, the withdrawal of military forces within three days, an exchange of prisoners, the negotiation within two months of a treaty of friendship, commerce and navigation, and the reference of future disputes to arbitration by the president of the United States and the president of Mexico. In accordance with the terms of this treaty, a peace conference was opened on September 16 at San José.—The treaty between the United States and Santo Domingo (see last RECORD, p. 356) has not yet been passed upon by the United States Senate. It is reported that a new treaty may be negotiated.—Last year, when the operation of the new customs tariff of Germany was postponed in our behalf (see last RECORD, p. 356), the Washington government promised to ask Congress to make certain changes in our customs laws. A recommendation to this effect was made to Congress by the secretary of the treasury, but Congress adjourned without taking any action. Complaint has been made by Germany over this failure. It has been recently announced that the state department will send experts to Germany to study the tariff question. On July 31 it was announced that the United States would pay Germany \$20,000 in settlement of the Samoan claims.—Diplomatic relations between the United States and Colombia have become somewhat more friendly. Early in July it was announced that Enriquez Cortez had been appointed minister

at Washington.—On July 16 Japanese subjects, who had been illegally killing seals on and near St. Paul island, were fired upon by the American guards. Five poachers were killed, others were wounded, and twelve were captured and held for trial. The United States government reported the matter to Japan as a regrettable incident, but made no apology. Japan instituted an investigation to ascertain the facts, but in no way displayed a disposition to make trouble over the incident. In October, Japan protested against the exclusion of Japanese children from the schools provided for white children in San Francisco. On October 26 President Roosevelt directed Mr. Metcalf, secretary of commerce and labor, to proceed to San Francisco and make a thorough inquiry into the situation. On the same day Judge Wolverton of the United States circuit court issued an order to the board of education to show cause why an injunction should not issue to compel the reinstatement of I. Yasura, one of the excluded children.—Friction over the question of fishery rights in the waters about Newfoundland has continued. In September, by direction of President Roosevelt, a government vessel was dispatched to investigate the situation and gather facts for use in approaching fisheries negotiations. In October a *modus vivendi* was arranged for the coming season. As Newfoundland was not consulted by the home government in making this arrangement, the people of the island complain that their interests have been betrayed.

EUROPEAN INTERNATIONAL RELATIONS.—The *entente cordiale* between Great Britain and France was again demonstrated early in May in hospitalities accorded to King Edward in Paris by President Fallières and by the visit of English officers of high rank later in the year to the French manœuvres.—In June, with the evident purpose of discrediting reports of coldness between Emperor William and King Victor Emmanuel and of a weakening of the triple alliance, Emperors Francis Joseph and William on the one hand and the King of Italy on the other exchanged published telegrams.—Meanwhile the relations between Great Britain and Germany appear to have improved. On May 22, after the return of representatives of German cities from a visit to England, where they were cordially received, the German foreign secretary announced that in his opinion "the period of estrangement (*Verstimmung*) between Germany and England is past." Still more tangible proof of improved relations was afforded in August by a personal meeting of the sovereigns of the two countries in the castle of Friedrichshof at Cronberg.—Negotiations resulting in a better understanding between Great Britain and Russia also are said to have been in progress during the past few months. A proposed friendly visit of a British squadron to Russian ports was however abandoned, at the instance of Russia, lest it produce undesirable results.—The higher officers who participated in the assassination of the late King Alexander having been retired from active service, Great Britain early in June announced an intention of resuming diplomatic relations with Serbia, and J. B. Whitehead, chancellor of the embassy at Berlin, was appointed minister at Belgrade.—

The expulsion of Greeks from Roumania led in May to a severance of diplomatic relations between Greece and Roumania.—In order that the American representative might be able to secure access to the sultan at all times, the American legation at Constantinople was raised to an embassy. The change was not pleasing to the sultan, and it was not until October, after long delays, that Ambassador Leishman was able to present his credentials.—The Turkish occupation of the Sinai peninsula (see last RECORD, p. 355) having continued in spite of all protests, the British government, on May 3, delivered an ultimatum to the porte, demanding that within ten days the sultan should withdraw his troops from the disputed territory. As Great Britain was evidently ready to use her army and navy to enforce the demand, the sultan, on the advice of representatives of various other powers, yielded, and the troops were withdrawn.—The relations between France and the Papacy (see last RECORD, p. 354) have continued to be strained. In August, in an encyclical dealing with the separation law, the pope took the position that religious worship associations can not be formed without violation of the sacred rights of the church and that so long as the law continues unchanged it would not be permissible for Catholics to adopt other forms of association.—A new commercial treaty between France and Switzerland was announced in October.—The Universal Postal Union closed its sixth session at Rome late in May. Its main achievement was the cheapening of the postage rate on heavy letters. It also evolved a plan for "reply coupons."—The fourteenth Inter-Parliamentary Peace Conference was opened on July 23 in the royal gallery of Westminster palace, London. Lord Weardale was elected president, and the delegates were welcomed by Sir Henry Campbell-Bannerman, the English premier. For the first time the Russian nation was represented; but upon the news of the dissolution of the Duma (see RUSSIA) the Russian delegates withdrew. On July 24, after an eloquent speech by Mr. William Jennings Bryan, of Lincoln, Nebraska, a resolution was adopted that in international disputes not of a nature for arbitration hostilities should not be resorted to before mediation or the appointment of an international commission.

ASIATIC INTERNATIONAL RELATIONS.—The boundary dispute between Turkey and Persia (see last RECORD, p. 355) still remains unsettled. Late in June an attempt on the part of a Turkish force to seize additional territory was checkmated by the governor of Pushkar, who repulsed the invaders with considerable loss. In August the Persian ambassador at Constantinople was informed that Turkish troops had occupied the district of Margovar, containing some twenty-five villages, and he thereupon lodged an energetic protest with the porte. About the same time the Turkish commission appointed to inquire into the dispute reported in favor of the Turkish contention.—Early in May an edict was issued in China looking to the restoration of Chinese control over the customs administration, the object seemingly being to secure more money for military reforms and perhaps to evade the payment of foreign indebtedness. Vigor-

ous protests were lodged against such action by the representatives of the powers, and after a long attempt at evasion the Chinese government promised to retain Sir Robert Hart at the head of the customs system.—The Chinese boycott of American goods (see last RECORD, p. 356) still continues, and the importation of some articles has fallen off fifty per cent.—Progress has been made in the evacuation of Manchuria (see last RECORD, p. 355) and in the opening of that region to foreign trade. On September 1 Dalny was opened by the Japanese as a free port.—In May a dispute arose as to whether the Russian consul-general to Korea should receive his *exequatur* from the emperor of Korea or from the emperor of Japan, but in June Russia gave way and consented that he should receive it from the mikado.

AFRICAN INTERNATIONAL RELATIONS.—A dispute between France and Turkey regarding the frontier between Algiers and Tripoli arose in July; but on August 27 it was announced that Turkey had agreed to evacuate Djanet or, if the place had not yet been occupied by the troops sent thither, to countermand the order of occupation, and that the *status quo* should be reestablished until an arrangement could be made to fix the boundary more definitively.—Early in July it was announced that an Anglo-French-Italian treaty had been negotiated with Abyssinia. The main features of the treaty are a guarantee of the integrity of the Abyssinian empire, the adoption of the principle of the open door and commercial equality for all countries, and the continuation by the French of the railroad connecting Addis Ababa, the capital, with the coast.—Early in May a German force, while in pursuit of Marengo, the leader of the Herero rebellion in Southwest Africa, crossed the border into Cape Colony. The German government soon after voluntarily apologized for the incident and promised to prevent its recurrence. Marengo himself was taken prisoner by the Cape police.—In September a special German mission visited Fez, the capital of Morocco. Early in October Mr. Gummere, the American minister, demanded that a troop of cavalry be sent to capture Kaid Relia, a chief who had connived at the escape of a soldier who had assaulted the son of a Mohammedan who was under American protection. He also demanded the punishment of the guilty persons and an indemnity. Continued disorders in Morocco (see ASIA AND AFRICA) caused France and Spain in October to dispatch warships to the ports of that country.

II THE UNITED STATES.

THE ADMINISTRATION.—The struggle between the president and his opponents in Congress (see last RECORD, p. 358) was continued during May and June. A question of veracity having arisen between the president and ex-Senator Chandler, who had been acting as an intermediary between the president and Democratic supporters of the railroad rate bill, the incident was seized upon by the president's enemies, and he was subjected to most bitter attacks, particularly from Senators Bailey and Tillman. How-

ever, the confidence of the people in the president's policies remained unshaken, and before the adjournment of Congress most of the important measures for which he had been contending were enacted into law (see CONGRESS).—Moved by the outcry raised by revelations in Mr. Upton Sinclair's *Jungle* concerning conditions in the Chicago meat-packing establishments, the president sent a commission composed of Charles P. Neill, commissioner of labor, and James B. Reynolds, a former settlement worker, to make an official investigation. As the two discovered many revolting and disgusting conditions, a bill to remedy the evils was introduced into the Senate by Senator Beveridge on May 21, and in support of the bill the president sent Messrs. Reynolds' and Neill's report to Congress, together with a vigorous special message, on June 4. The revelations produced a great sensation both here and abroad, and the bill, with some modifications, finally became a law (see CONGRESS).—Late in June, on the recommendation of Secretary of State Root, the president issued an executive order supplementary to the consular reorganization act, regulating appointments and promotions in the consular service by providing that appointments to posts carrying a salary of \$2500 or less are to be made after examination or from persons already occupying subordinate posts, and that all the upper grades are to be filled by promotion based on record of service. Political affiliations of the candidate are not to be considered in making appointments.—On October 23 a reconstruction of the cabinet was announced, Secretary Shaw will retire from the treasury department and will be succeeded by Mr. Cortelyou, the postmaster-general, whose place will be filled by Mr. George von L. Meyer, of Massachusetts. Mr. Moody also will retire from the position of attorney-general and will be succeeded by Mr. Bonaparte, the secretary of the navy; Mr. Metcalf, the secretary of commerce and labor, will take the place left vacant by Mr. Bonaparte; and the new secretary of commerce and labor will be Mr. Oscar S. Straus, ex-minister to Turkey, the first Jew to hold a cabinet position. Among the other appointments made since April are the following: James S. Harlan, of Chicago, and Edward E. Clark, of Iowa, to be members of the reorganized interstate commerce commission; Herbert H. D. Pierce, third assistant secretary of state, to be first minister to Norway; Colonel C. C. Sniffin to be paymaster-general of the army, *vice* Gen. Francis D. Dodge retired; W. M. Shuster and Judge Charles E. Magoon to fill vacancies on the Philippine commission. Judge Magoon was, however, later sent as provisional governor to Cuba. For recess appointment of canal commissioners see THE IsthMIAN CANAL.

THE DEPENDENCIES.—The activity of the Pulujanes in the Philippines (see last RECORD, p. 360) has continued. On June 19 a band of 300 attacked the town of Burauen, in the island of Leyte, killed five policemen, wounded five others and captured the remainder of the force with the exception of the lieutenant in command. On July 22 another detachment of police was badly handled on the same island, and on August 9 still

another detachment fell into an ambush, with the result that five were killed. Late in the same month, Armogines, a chief, was captured near Baybay, and the situation on the island now seems to be improved, although Lieutenant R. E. Treadwell was killed south of Burauen on September 10. In June many ladrones, among them Macaro Sakay, the self-styled president of the "Filipino Republic," and Francisco Carreon, the vice-president, surrendered to the constabulary. In September, Judge Villamoor, a Filipino, sentenced Sakay and three other leaders to death and Natividad and 34 other ladrones to twenty years' imprisonment at hard labor.—The Philippine commission has issued an order for the establishment of postal savings banks. In September W. M. Shuster was appointed to one of the vacancies on the Philippine commission.—On the 30th of the same month seventeen provincial governors opened the annual convention of governors at Manila, and others attended the later sessions. The independence party proved to be in the majority and elected a nationalist chairman. The governors manifested much interest in the Cuban situation, and expressed the fear that the failure of the Cuban republic would influence American opinion against the proposed Philippine assembly and restrict the policy of freely extending autonomy to the Filipinos.—Much disappointment was felt in the islands over the failure of Congress to pass a Philippine tariff bill.

THE Isthmian CANAL.—After considerable delay and opposition Congress authorized the construction of a lock canal (see last RECORD, p. 360) across the isthmus. It is estimated that such a canal can be constructed at much less cost and in a much shorter time than one at sea level. On July 20 the bids were opened for \$30,000,000 canal bonds, and they were subscribed for several times over at an average of about 103.95. A resolution was passed by Congress providing that materials purchased for use in constructing the canal must be of domestic production and manufacture, except in cases where the president may consider the bids extortionate. As the Senate failed to act upon the nominations for the canal commission, the president after the adjournment of Congress reappointed the old commission, with the exception that Mr. Bishop, against whom there had been much protest, was dropped, and that General Ernst was succeeded by Chief Engineer Stevens. The problem of labor remains a trying one, and it has been decided to make an experiment with coolies. Contracts for 2500 have been prepared. The policy has been violently attacked by Samuel Gompers, president of the American Federation of Labor, as being a violation of the exclusion act and contrary to the interests of American workingmen.

CONGRESS.—The session of Congress which closed on June 30 was marked by more important legislation than any other session for many years. Of the various acts passed the most notable were the railroad rate law, the meat inspection law, the pure food law, an immunity law and the joint statehood law. (For the introduction of most of these measures see

last RECORD, p. 361.) The railroad rate act, which was the Hepburn bill somewhat modified, authorizes the interstate commerce commission to call a hearing and fix a maximum, just and reasonable rate of transportation where the rate in force is complained of, but the railroads are given the right to appeal from such a decision to the courts. Rebates and other discriminations are forbidden, and heavy penalties are fixed for granting or receiving them. Pipe-lines, sleeping-car companies and express companies are declared to be common carriers and are made subject to the law. Railroads are forbidden to engage in any other business than that of transportation. Charges for private freight cars and all charges incidental to the use of them must be included in the transportation charge and cannot be separate items. Passes may be given only to specified classes of persons. The number of commissioners is increased to seven, and the salary of each is fixed at \$10,000 a year.—The meat inspection law (see THE ADMINISTRATION, *supra*) requires three inspections by government inspectors of all animals killed for the interstate trade. These must first be inspected alive, and any found to be diseased must be slaughtered separately from the rest. After an animal has been slaughtered the carcass must be carefully inspected and tagged "inspected and passed" or "inspected and condemned." Condemned carcasses must, in the presence of the government inspector, be so treated that their use as food will be impossible. A second inspection of passed meat must be made in order to see if it has become unfit for food. Then an inspection must be made of all meat food products, and, under the inspector's supervision, a label stating the contents is to be put on the can or other receptacle into which the product is placed. All establishments must be kept in a sanitary condition. The government maintains the system of inspection at its own cost.—The pure food law, which also applies merely to interstate trade, forbids the manufacture, sale or delivery of any adulterated, misbranded, poisonous or deleterious foods, drugs, medicines or liquors. Foods and drugs are to be considered as adulterated if they contain any substance that causes them to fall below the regular standard in purity, quality or strength. External preservatives may be used if directions for their removal are printed on the package. A false description on a label is regarded as misleading, and the using of such a description is made a punishable offense. Mixtures containing alcohol, morphine, opium and other habit-forming drugs must have printed on the label the quantity of the drug contained. The word "blend," "compound" or "imitation" must appear on the label of mixed liquors, etc., and only harmless flavoring and coloring ingredients may be used.—The immunity law was passed primarily in order to make it easier for the government to obtain information of violations of law by corporations. Officers of corporations must now testify to the misdeeds of their company without having recourse to any plea of immunity. It gives the government wider power than ever before to investigate the affairs of corporations.—The joint statehood law provides for the admission of Oklahoma and the

Indian territory jointly, and for the admission of New Mexico and Arizona jointly in case each of these two territories voting separately gives a majority in favor of such admission.—A new naturalization law imposes stricter requirements for admission to citizenship. One of its provisions is that no alien who is unable to read and write may become a citizen. Provision is also made to prevent the possibility of fraudulent naturalization. In case a naturalized citizen remains abroad for five years or more his rights as a citizen may be revoked. This provision (which is found in many of the treaties concluded by the United States but now first appears upon the statute-book) is aimed at those persons who, after obtaining American naturalization, return to their original homes and claim the privileges of American citizenship without discharging any of the duties of citizens. The division of naturalization is combined with the bureau of immigration, which is now to be known as the bureau of immigration and naturalization. A national quarantine act replaces the discordant state rules with a uniform system of restrictions.—Other acts provide for reorganizing the consular service, appropriate \$25,000 a year for the president's traveling expenses, make the Mariposa grove of big trees a national reservation, prohibit the canteen system in soldiers' homes, and exempt denatured alcohol from the internal revenue tax. The total appropriations made by the Congress amounted to about \$875,000,000.—Among the measures which failed of passage were the bill granting full citizenship to Porto Ricans, the Philippine tariff bill and the bill for regulating campaign contributions. The Santo Domingo, Isle of Pines and Morocco treaties also went over.

THE FEDERAL JUDICIARY.—In the cases of the Security Mutual Life Insurance Co. *v.* Pruitt and of the Insurance Commissioners of the State of Kentucky and the Travellers Insurance Company of Hartford *v.* the same, decided May 14, the supreme court held that a state has the power to prevent a foreign corporation from doing business within its borders unless such prohibition is so conditioned as to violate the federal constitution; and that a state statute which, without requiring a foreign insurance company to enter into any agreement not to remove into the federal court cases commenced against it in the state court, provides that if the company does so remove such a case its license to do business within the state shall therefore be revoked, is not unconstitutional.—In Pearson *v.* Williams, United States commissioner of immigration, decided May 14, it was held that the secretary of commerce and labor has a right under the act of March 3, 1903, to order, after a second hearing before a board of special inquiry, the deportation of an alien alleged to have come to this country under contract to perform labor, although there had previously been a special inquiry before the same persons and upon the same questions at the time of the alien's landing and he had been allowed to land. The board of inquiry is not a court but an instrument of the executive power, and its decision does not constitute *res judicata* in a technical sense.—In the case of Burton *v.* United States, decided May 21, it was held that Congress has power to make it an offense

against the United States for a senator or representative, after his election and during his continuance in office, to agree to receive, or in fact to receive, compensation for services before a department of the government in relation to matters in which the United States is directly interested. The fact, however, that the sentence imposed upon a senator convicted of an offense includes the affirmation that he is rendered forever thereafter incapable of holding any office of trust or emolument under the government of the United States does not operate *sipso facto* to vacate his seat nor does it compel the Senate to expel him or to regard him as expelled (see STATE AND MUNICIPAL AFFAIRS, *infra*).—In Ayer and Lord Tie Company *v.* Commonwealth of Kentucky it was held that vessels which are owned by a corporation domiciled in one state and which, though enrolled in a part of another state, are not engaged in commerce exclusively in the latter state but in interstate commerce and are taxed and have acquired a permanent situs for taxation in the first state are not subject to taxation by the second state.—In Willard *v.* Roberts it was held that the constitutional provision that revenue bills must originate in the House of Representatives and not in the Senate is applicable to bills that levy taxes in the strict sense of the word and not to bills for other purposes which may incidentally create revenue.—In McNeill *v.* Southern Railway Co. and Southern Railway Co. *v.* McNeill, it was held that while a state may confer power on an administrative agency to make reasonable regulations as to the place, time and manner of delivery of merchandise moving in channels of interstate commerce, any regulation which directly burdens interstate commerce is repugnant to the federal constitution.—In People of the State of New York upon the relation of the New York Central and Hudson River R. R. Co. *v.* Miller and in other cases it was held that if a statute of a state as construed by its highest court is valid under the federal constitution the United States supreme court is bound by that construction, and that in determining the value of a railway franchise for the purpose of taxation by a state account may be taken of the value of railway cars temporarily absent from the state.—The persons cited by the supreme court to appear and answer charges of contempt based on the lynching at Chattanooga of the negro Edward Johnson in March (see last RECORD, p. 367) presented themselves before the court on October 15. The chief counsel for the defendants contended that the court had exceeded its jurisdiction by granting the negro a stay of sentence. The answer on the part of the department of justice which is prosecuting the case for the United States had not been made at the close of this RECORD.—For other federal decisions see THE TRUST PROBLEM, *infra*.

STATE AND MUNICIPAL AFFAIRS.—Disastrous storms swept the coasts of Alabama and Florida late in September and again in October. At Mobile alone the September storm is reported to have resulted in the death of more than 100 persons, while the property loss was estimated at many millions. The October storm, which occurred on the 18th, was par-

ticularly destructive at Elliott's Key, where a wave drowned more than 200 people.—In June the long political deadlock in Delaware (see RECORD of June, 1905, p. 366) was at last broken by the defeat of Addicks and the election to the United States Senate of Colonel Henry A. du Pont.—At the instance of the governor and the attorney-general of Indiana a raid was made on July 3 upon the notorious French Lick Springs hotel, the property of Thomas Taggart, chairman of the Democratic national committee, and a large quantity of gambling apparatus was seized. Many Democratic newspapers called upon Mr. Taggart to resign his chairmanship, but he refused to do so.—On June 4 Joseph R. Burton, United States senator from Kansas, who had previously been convicted of the crime of practicing before a government department while a member of the Senate (see THE FEDERAL JUDICIARY, *supra*) resigned from that body in order to escape expulsion. Governor Hoch offered the vacant seat to F. D. Coburn, secretary of the state board of agriculture, and when he declined it appointed Judge A. W. Benson. All legal resorts having failed, Burton began in October to serve his sentence.—A bill providing for publicity of campaign contributions was signed by Governor Higgins of New York on May 21.—John M. Pattison, Democratic governor of Ohio, died on June 18, and was succeeded by Lieutenant-Governor Harris, a Republican.—In May forest fires laid waste many hundred square miles of territory in the Upper Peninsula of Michigan and destroyed several villages.—In Oregon woman suffrage was voted down by 47,075 against 36,902.—In South Carolina the questions whether Senator Tillman should be returned to the Senate and whether the state dispensary system should be continued were both answered in the affirmative by the Democratic primaries late in August.—The Senate committee on privileges and elections reported in May by a small majority that Reed Smoot, senator-elect from Utah (see RECORD for June, 1904, p. 341), ought not to be allowed to take his seat. On October 1 Joseph F. Smith, the president of the Mormon Church, was arrested and bound over to the district court on a charge of polygamy. The complaint was sworn to by a Mormon deputy sheriff, the warrant was served by order of a Mormon sheriff, and the committing magistrate was also a Mormon.—On July 17 it was held by the Virginia corporation court that the Churchman two-cents-a-mile-rate law was in violation of the fourteenth amendment to the federal constitution and was therefore void.—New primary election laws have been adopted in Wisconsin and North Dakota.—A committee of the National Civic Federation, composed of Profs. Frank J. Goodnow and John R. Commons, Edward W. Bemis, superintendent of the water division of Cleveland, Ohio, and others, made an extended study during the summer of the workings of municipal ownership and operation in certain of the cities of Great Britain and Ireland. The League of American Municipalities, at its tenth annual convention at Chicago in September, refused to put itself on record as either for or against municipal ownership.

THE CAMPAIGN AND THE ELECTIONS.—The political campaign was an unusually quiet one. The Republicans went before the people on the record of the president and of Congress, and national issues were not clearly defined. A feature of the campaign was the entrance into politics of the American Federation of Labor. In the middle of July the executive council of that body issued an address recommending the defeat of persons hostile to organized labor. Especially strong efforts were made by Mr. Gompers, president of the federation, to prevent the re-election to the House of Mr. Littlefield in Maine and of Speaker Joseph Cannon in Illinois, but his efforts in both cases were without avail.—An episode of interest was a monster reception tendered by Democrats from all over the country on August 30 to Mr. William Jennings Bryan on his arrival at New York from a tour around the world. In a speech at Madison Square Garden Mr. Bryan committed himself to the principle of the government ownership of railroads. His attitude on this subject served once more to alienate certain sections of his party, and enthusiasm for him, which had displayed itself in several states in endorsements of him for the Democratic presidential nomination in 1908, has perceptibly fallen off.—In Georgia a contest filled with disgraceful personalities and other undesirable features resulted in the nomination for governor by the Democrats of Hoke Smith, ex-secretary of the interior, over Clark Howell, editor of the Atlanta *Constitution*, and other aspirants, and in the subsequent election of Smith. In Iowa Governor Cummins, the Republican champion of tariff revision, was renominated for a third term despite the opposition of Secretary Shaw, but the platform was a temporizing one. In Oregon George E. Chamberlain, Democratic governor, was re-elected in June by a small majority, but the Republicans gained both Congressional seats. In Maine the September election, which had been preceded by a campaign in which the liquor question was the chief issue, resulted in the election of a Republican governor, but by greatly decreased pluralities. In Pennsylvania the reform Republicans took the name of the Lincoln party and nominated Lewis Emery for governor, who was also supported by the Democrats. The regular Republican nominee, Edwin S. Stuart, ex-mayor of Philadelphia, was elected November 6. In New York state William Randolph Hearst, the well-known editor and newspaper proprietor, was nominated for governor by the Independence League on a platform advocating government ownership. He was later accepted by the regular Democratic convention. As his opponent the Republicans put forward Mr. Charles E. Hughes, a lawyer who had distinguished himself in the investigation of the life insurance scandals (see last RECORD, p. 364). Many Democrats of prominence and many Democratic newspapers refused to support Mr. Hearst. Mr. Hughes was elected over Mr. Hearst, November 6, by about 60,000 plurality, but as this RECORD closes the Democratic candidates appear to have been elected to the other state offices.—The election on November 6 was on the whole a victory for the Republicans. Their majority of 112 in the House of Representatives was, how-

ever, reduced by about one-third. Among the doubtful states the Democrats carried Missouri, New Jersey, North Dakota, Nevada and Rhode Island, and re-elected their candidate for governor in Minnesota. Joint-statehood was accepted in New Mexico but rejected in Arizona. In Oklahoma the Democrats were successful and will have the work of framing the new state constitution in their hands. In New Hampshire none of the candidates for governor appears to have received a majority; if so, the election will be thrown into the legislature.

THE TRUST PROBLEM.—On May 2 Commissioner Garfield submitted to the president a report of his investigation of the Standard oil company. The report showed that the company has been the recipient of two kinds of favors from transportation companies: first, secret rates lower than the published rates; second, advantages under open rates in the way of quicker service, *etc.*, and in the refusal of railroads to give through rates to other companies. On the 4th the president addressed a lengthy message to Congress setting forth the evils discovered and urging that full power be conferred upon the interstate commerce commission to check the evils described. (For the railroad rate legislation see CONGRESS, *supra*.)—Many prosecutions have been instituted for giving or accepting rebates. On June 12 the Armour, Swift, Cudahy and Nelson Morris packing companies were found guilty of violating the Elkins act and were fined \$15,000 each; the Burlington road which granted the rebates was also convicted and fined. Two New York brokers connected with the case were found guilty, and, though the Elkins act provided merely for fines, they were held to be guilty of a conspiracy and, under section 5440 of the Revised Statutes, were sentenced, one to four and the other to three months' imprisonment. Appeal was taken. In a later case against the New York Central railroad and the American sugar refining company Judge Holt held that the contention that the agreement to give a rebate is "a conspiracy punishable with imprisonment while the actual giving of rebates is an offense punishable only by a fine seems to me too subtle a distinction to be drawn in the administration of the criminal law." In July the Alton railroad was fined about \$60,000 for rebating; in October the New York Central was convicted of the same offense; and there have been other convictions; while numerous indictments against the Standard oil company, the sugar trust and other defendants are still pending.—The investigation of the affairs of the Pennsylvania railroad company by the interstate commerce commission (see last RECORD, p. 365) revealed the fact that many employees of the road had been recipients of large gifts of stock from coal companies. In return for these gifts the employees were expected to favor the coal companies by furnishing special details of cars and by securing for them more rapid transportation than for those of their competitors. Some of the employees were later dismissed from the service of the road.—A suit brought under the Ohio anti-trust law against the Manhattan oil company, a concern controlled by the Standard oil company, developed the interesting

fact that the stock of the company was "owned" by a holding company in London called "The General Industrial Development Syndicate, Limited." It appears that this dummy concern was created with the expectation that the ostensible holding of the stock of the company abroad would bury the link connecting the real American owners with the subsidiary company and that the tracing of the stock lodged in London back to the Standard oil company in America would be found to be beyond the jurisdiction of the American courts. The case in question resulted in a verdict of guilty, and a heavy fine was imposed. Appeal was taken.

LABOR AND CAPITAL.—On May 5 a convention of anthracite miners at Scranton, Pennsylvania (see last RECORD, p. 366) decided in favor of returning to work under the terms of the award of the anthracite coal strike commission of 1903. An agreement to last for three years was later entered into between the men and their employers, and a general strike was thereby averted. On June 1 the joint convention of coal miners and operators of Illinois adopted an agreement to hold until March 31, 1908. This formally ended a suspension of work which had kept about 60,000 miners idle for two months. Attempts to operate mines at Steubenville, Ohio, with non-union labor resulted on June 4 in armed clashes between strikers and guards. The sheriff of the county applied to the governor for aid, and two regiments of militia were sent to the seat of trouble, with the result that order was restored.—On July 13, at a conference between President John Mitchell, Secretary Wilson and other representatives of the United Mine Workers and prominent mine operators, it was agreed that the miners in the central Pennsylvania bituminous field should resume work on practically the same basis as that of 1905. The operators gained the principle of the open shop and of arbitration, and maintained their contention regarding the check-weighing system.—Freight handlers on the great lakes struck in the middle of May in order to secure recognition of the Lake Pilots' protective association, an organization composed of mates on freight boats. The Lake Carriers' association refused the demand, and after a few days of idleness the men consented to return to work on last year's basis. The disputed points were held over for later settlement.—In May a strike of union funeral drivers in New York resulted in funeral processions being stopped and mourners and non-union drivers being subjected to violence.—The strike of the structural iron workers (Housesmiths' and Bridgmen's union) in the same city (see last RECORD, p. 366) culminated on July 10 in a murderous attack of thirty union workmen upon special policemen employed in protecting non-union workmen employed on the New Plaza hotel. One of the policemen was mortally wounded and two others were left for dead. The strike was soon after declared off by the union, but the Allied Iron Trades association refused to reemploy the men until the principle of the open shop was agreed to nationally.—The work of rebuilding San Francisco has been greatly impeded by labor troubles. On August 26 street-car traffic was almost entirely suspended as a result of a strike for higher wages

and shorter hours.—Labor troubles in the Standard oil company's works at Whiting, Indiana, resulted on September 25 in riots, in which a dozen persons were severely injured.—New child labor laws have been passed by Georgia and by Maryland.—On July 19, at the instance of Secretary Taft, President Roosevelt issued an order for the enforcement of the law of 1892, which provides that, except in cases of emergency, work upon government buildings, ships and other properties shall be limited to eight hours a day for each workman. The law applies to workmen employed by contractors as well as to those employed directly by the government.—During the summer sensational revelations were made concerning the practice of white peonage in Florida lumber camps. The victims were in most cases ignorant foreigners who had been enticed to the South under pretense of favorable terms of employment.

THE RACE PROBLEM AND LYNCHING.—As usual, the past six months have been marked by numerous outbreaks of race hostility and of mob violence. On July 1 six hundred citizens of the northern part of the Chickasaw nation lynched and burned Will Newbright, a negro of San Antonio, accused of attacking the daughter of a farmer. Several United States marshals attempted to take the negro from the mob but were unsuccessful. On August 6 a mob stormed the jail in Salisbury, North Carolina, to obtain possession of five negroes charged with the murder of a white family. The militia fired upon the mob and mortally wounded one man, but the mob obtained possession of the negroes and lynched three of them. Many members of the mob were arrested, and four days later one of the ringleaders, an ex-convict, was tried, convicted and sentenced by Judge Long to fifteen years at hard labor. At Charlotte in the same state four true bills were found on July 16 against participants in the lynching of John V. Johnson at Wadesborough on May 28. At Greenwood, South Carolina, Bob Davis, a negro who had attacked a white girl and later had criminally assaulted a colored girl, was lynched on August 16 by a mob despite an appeal made by Governor Heyward to allow the law to take its course. A week later Willie Spain, a negro accused of having attempted to enter a window of a white man's house, was shot to death by a mob near St. George, Dorchester county, South Carolina. As usual the sheriff failed to protect the prisoner. On the following day the jury in the case of Ross Galbraith, one of the leaders in the lynchings of Springfield, Missouri (see last RECORD, p. 368), failed to agree after twenty-four hours and were discharged. One of the worst outbreaks of recent years occurred in Atlanta, Georgia. On the night of September 22, aroused by a number of assaults or attempted assaults on white women, white mobs, rendered more bitter no doubt by the useless agitation of the race issue injected into the gubernatorial contest between Messrs. Hoke Smith and Clark Howell, began to attack negroes wherever found, including peaceful barbers and negroes riding in street cars. In a few instances the negroes attempted reprisals. Although the militia was called out, the riots continued for three or four

days, resulting in the death, according to one report, of 18 negroes and one white man. So far as is known, not one of the negroes slain was in any way connected with the offenses which led to the outbreak. Many arrests were made, mostly of negroes. At Mobile, Alabama, on October 2 a special policeman was killed and a member of the city council was wounded by a mob which was endeavoring to break into the jail for the purpose of lynching a negro charged with assault. The negro had previously been removed. Four days later on a train near the same town 200 men took two negroes from Sheriff Powers and his deputies and hanged them. The sheriff and his party were armed with shotguns and revolvers but offered no effectual resistance. Lynchings are also reported from Arkansas, Texas and elsewhere. In October a negro college building in the town of Seneca, South Carolina, was destroyed by dynamite. The negroes retaliated by firing the town.—Several cases of peonage have recently come to light. At Staunton, Missouri, on June 13 the United States marshal arrested James E. Smith, a prominent planter, on the charge of holding negroes in bondage and forcing them to work. Smith's son and other persons were arrested later on the same charge. The trials occurred in September at Cape Girardeau, and resulted in the conviction of the accused. Smith himself was sentenced to imprisonment for three and one-half years, and to pay a fine of \$5000, his son to two and one-half years and to pay an equal amount, and five guards employed by them were sentenced to terms varying from one to two years.—At Brownsville, Texas, in August the attitude adopted by the whites toward the colored troops stationed at Fort Ringgold led to encounters in which one white man was killed and another was wounded. Protests against the presence of the negro troops having been forwarded to him, the president ordered that the troops be transferred and the fort abandoned. As the men refused to disclose the identity of the guilty parties, the president, on November 6, ordered that the whole body of troops concerned be dismissed from the service in disgrace and that the men be debarred forever from reënlistment and from civil positions under the federal government.

III. LATIN AMERICA.

President Palma was peacefully inaugurated for a second time as President of Cuba on May 20. In August, however, dissatisfaction on the part of the defeated Liberals and their resentment of illegalities alleged to have been practiced in the elections (see last RECORD, p. 369) resulted in a rebellion. The movement was started in the western part of the island by Quintin Bandera, formerly a noted leader in the wars for independence. The government arrested many Liberal leaders, including José Miguel Gómez, Liberal candidate at the last election for the presidency, on charges of sympathy with the rebellion, and Bandera was defeated and killed on August 23 by a detachment of rural guards. Other risings, however, occurred in other parts of the island under Pino Guerra, an ex-congressman,

Carlos Mendieta, another ex-congressman, General Guzman and others. On August 22 the rebels captured the town of San Luis, in the province of Pinar del Rio, and the movement spread rapidly. On August 27 amnesty was offered by the government without result, and by the 31st five provinces, including Santiago, were in insurrection; estates belonging to Americans and other foreigners were being plundered, and all efforts at compromise had failed. On September 8, therefore, President Palma, believing himself powerless to quell the rebellion, asked the United States to intervene under the Platt amendment. (For the intervention of the United States and subsequent events, see *AMERICAN INTERNATIONAL RELATIONS, supra.*)—A revolt broke out in Santo Domingo in the middle of August. The rebels were driven out of Dajabon, but later they recaptured the place. They then laid siege to Monte Christo. An agreement between the government and the insurgents was reached in October, whereby the insurgents gave up the struggle. Generals Pichard, Pinos and Jiminez were exiled.—In the first days of June what threatened to be an international affair of importance occurred at the mines at Canarea, Sonora, Mexico, about 40 or 50 miles from the American border. About 5,000 Mexican miners struck and engaged in riots, which resulted in the death of about 40 persons, six of whom were Americans, and the destruction of a great deal of property, much of which was owned by American capitalists. The situation was complicated by an appeal on the part of Governor Ysabel, of Sonora, for military assistance from the United States; and an armed force of Arizona rangers actually crossed the border. The rioting was ultimately suppressed by the vigorous action of Colonel Kosterlitzky, of the Mexican rural guards. The trouble, according to some, was a result of the activities of a revolutionary junta at St. Louis; according to others, it was merely a result of labor dissatisfaction. In September Gabriel Rubio, colonel of the "First Regiment of the Revolution" and president of the Douglas Liberals, was arrested, with other petty officers, at Douglas, Arizona, and his trunk was found to be filled with revolutionary documents. Other persons charged with inciting rebellion in Mexico were arrested at Nogaly and elsewhere. Later in the month thirty bandits and smugglers took possession of Jiminez, a small town in Mexico, thirty miles from Eagle Pass, but were soon dispersed by Mexican troops. Other ineffective attempts to start a rebellion occurred on the Arizona border in September.—In May a revolt broke out against the government of Guatemala. Alleging that San Salvador had rendered assistance to the rebels, Guatemala declared war upon that state. After a time Honduras became involved in the contest also, but after several battles had been fought the war was brought to a close through the mediation of the United States and Mexico (see *INTERNATIONAL RELATIONS, AMERICAN, supra.*).—On September 11 a revolutionary plot against the government was discovered in San Salvador, and on the 12th the republic was declared to be in a state of siege. As a presidential election occurs on November 30, presidential ambition appears to

have been at the bottom of the revolutionary plans, it being asserted that President Escalon was too favorable to the Independent party's candidate.—In May a delegation of Liberals from Panama visited the United States for the alleged purpose of securing aid to prevent the party in power from using fraud in the coming elections, but the mission was unsuccessful. In spite of threats of revolution, the elections, partly because of representations made by the United States, passed off in comparative quiet, although some heads were broken. Supporters of the existing government were generally elected. In August a plot to assassinate President Amador was discovered.—On May 17 Acting President Gomez of Venezuela appointed a new cabinet. In October General Castro quitted his retirement and once more resumed the presidency (see last RECORD, p. 369).—An unsuccessful attempt to overthrow the Alfaro government was made in Ecuador in September.—A rebellion occurred during the summer in the state of Matto Grasso, Brasil. Early in July the rebels murdered the governor and occupied the capital. The revolt was suppressed. In August another outbreak occurred at Aracajin, in the state of Sergipe.—On July 25 Pedro Monte, vice-president of Chile, was chosen president, to succeed Jermain Riesco. On August 16 the city of Valparaiso and other towns were overwhelmed by an earthquake, which killed several thousand people, rendered many thousands homeless and destroyed about \$100,000,000 worth of property. Assistance was rendered from abroad, and the government also appropriated large sums to aid the sufferers.

IV. BRITISH AMERICA AND AUSTRALIA.

Immigration into the Dominion of Canada is increasing rapidly, but the undesirable character of some of the immigrants has aroused a feeling in favor of restriction. The finance minister in his budget speech on May 22 announced an excess of receipts over expenditures amounting to \$7,860,000 and predicted a still larger surplus for the current year. Early in June the promotion of Mr. Fitzpatrick, minister of justice, to be chief justice of the supreme court necessitated a reorganization of the cabinet. The Dominion parliament, which adjourned in July, authorized the construction of more than 5000 miles of railway in various parts of the Dominion.—The Alberta legislature has selected Edmonton as the capital.—The June elections in Nova Scotia resulted in a gain of three seats by the Conservatives.—In August an anti-trust bill was passed by the commonwealth parliament of Australia. A preference of ten per cent on British goods and a preferential treaty with New Zealand were voted by the federal senate in September. New Zealand, however, later rejected the treaty. In October a preferential treaty with South Africa was also passed.—Early in May Mr. Rason resigned the premiership of Western Australia to become agent-general in London. After Mr. Frank Wilson had failed in an attempt to form a new ministry, Mr. Moore succeeded. Dissatisfied with the refusal of the federal government to authorize a survey for a transcontinental rail-

way, the legislative assembly in this province in September passed, by a vote of 19 to 13, a resolution affirming that the union of the state with the rest of the commonwealth was detrimental to the interests of West Australia and that the time had come for submitting to the people the question of withdrawing from the union. In the following month the legislative council by a vote of 19 to 8 adopted a motion that the state secede from the connection.—In June the ministry of Tasmania was reconstituted on a coalition basis.—In South Australia a bill was passed in August lowering the property qualification for the franchise from £25 to £15, but the legislative council refused to accept the measure. The ministry resigned and, after ex-Premier Butler had vainly tried to form a new one, the assembly was dissolved.—In New South Wales a bill establishing free education in all primary schools was passed in September.—Mr. Seddon, the able and progressive premier of New Zealand, died on June 10 while on his way home from a visit to Australia. Mr. Hall-Jones, acting premier, formed a temporary ministry, but was succeeded in August by Sir Joseph Ward, the postmaster-general, who had just returned from a trip abroad. Mr. Hall-Jones remained in the ministry as head of the department of public works and railroads. Among the measures brought forward by the new government was one to compel all owners to sell within ten years the excess of land held beyond £50,000 unimproved value and to prevent owners of 1000 acres of first class land or 5000 acres of second class land from adding to their holdings.

V. EUROPE.

GREAT BRITAIN.—Of the measures before Parliament that which elicited most discussion was the Birrell education bill for the exclusion of denominational control of the schools. This measure met with much opposition, particularly from Anglicans and Catholics; many meetings were held and many resolutions were passed against it, and in one demonstration early in June 10,000 clergymen and parishioners appeared in London to protest against its adoption. After long consideration, however, it passed the House of Commons in an amended form just before the recess and went up to the House of Lords, where after the recess serious if not destructive amendment was begun. As it passed the Commons the bill provides that from January 1, 1908, all schools maintained by the local educational authorities must be "provided" schools. The local authorities are to have power to purchase or lease existing schools. Teachers are to be appointed by local authorities without undergoing any religious test, and no public money is to be used in denominational instruction. Religious instruction may, however, be given two mornings a week by others than the teaching staff by arrangement with the school authorities. Attendance at such instruction will not be compulsory. A further grant of £1,000,000 is to be made in support of education. A national educational council is to be provided for Wales, to be under a special minister.—On May 17 the House of Lords threw out a

bill passed by the Commons prohibiting entrance into the country of aliens to take the places of British workingmen during trades disputes.—Parliament adjourned on August 3 until October 23. Among the measures which went over were a bill introduced by Mr. Bryce, authorizing a loan of £4,500,000 with which to provide cottages for Irish laborers, and a bill dealing with colonial marriages. The former had passed the Commons, and the latter had passed its second reading in that house.—When the autumn session opened, the woman suffragists, who have been very active during the past few months, made a demonstration to advance their cause. Some of the women mounted a window sill of the outer lobby of the House of Commons and began haranguing the crowd, but were removed by the police. Eight of the more violent were arrested. The remainder then attempted to hold a meeting on the Thames embankment, but this also was prevented by the police because meetings within one mile of Parliament are illegal. The agitators then adjourned to tea. Some of those arrested were later sentenced to imprisonment.—On July 12 Mr. Haldane, the secretary of war, announced that the government would endeavor to secure a more economical administration of the army, and would reduce the regular force by ten battalions. The proposed reduction aroused great opposition in certain circles.—On August 8 the court of appeal, the master of the rolls, and Lords Justices Moulton and Farwell handed down an important judgment in an appeal of the West Yorkshire county council, the question at issue being whether the local educational authorities are liable to pay the expense of denominational religious instruction in non-provided schools under the educational act of 1902. Their lordships held that the local authorities are not so liable. Appeal was taken to the House of Lords.—On September 3 a congress of 490 delegates representing a million and a half trades unionists met at Liverpool. The congress passed resolutions instructing the Labor members in Parliament to introduce a bill for the nationalization of railroads, canals and mines. A resolution was also carried in favor of an eight-hour day.

FRANCE.—On May day there was some disorder in Paris as a result of labor demonstrations, but the government had taken elaborate precautions to crush out any revolt and hundreds of arrests were made. On the following Sunday the general election took place in comparative quiet and resulted in gains for the existing government. The principal significance of the result was the ratification by the people of the separation law (see last RECORD, p. 371).—The deficit for the fiscal year amounted to about 180,000,000 francs, there having been extraordinary expenditures in putting the country in a state of defence during the quarrel with Germany over the Moroccan affair (see last RECORD, p. 353). The cabinet agreed upon an income tax bill to be submitted to the legislature.—This body opened on June 1, and M. Henri Brisson was elected president of the Chamber of Deputies.—In the same month the revision of the Dreyfus case (see RECORD for June, 1904, p. 359) was begun in the court of cassation. In the middle of July

the court held that in view of certain new facts the innocence of Captain Dreyfus was established, quashed the judgment of the Rennes court-martial and decided that no new trial should be ordered. In the Chamber the government introduced bills promoting Dreyfus to be major and Colonel Picquart, his defender, to be brigadier-general, and these bills were passed by overwhelming majorities. A bill for removing Zola's remains to the Pantheon was also adopted. The reopening of the case was attended with a partial renewal of the old bitter feeling, and a number of personal encounters and duels resulted. The outcome, however, was received with satisfaction by the great majority of the French people. On July 21, in the courtyard of the École Militaire, where eleven years before he had been degraded, Major Dreyfus was presented before the troops with the insignia of the Legion of Honor.—Despite the issue of a papal encyclical (see INTERNATIONAL RELATIONS) against the separation law, the government persevered in the intention to enforce it. On September 4 the French bishops met in Paris and sent a telegram to the pope thanking him for his directions and expressing the hope that they would be able to find a solution of the difficulty, but later they adjourned without having found one. In a few parishes the priests and people have formed associations in compliance with the law without having received sanction from the bishops.—On October 19 M. Sarrien announced that because of ill health he had decided to retire from the cabinet, and all the other ministers thereupon tendered their resignations. M. Clémenceau, minister of the interior, was then entrusted with the formation of a new ministry, which included General Picquart as minister of war and M. Viviani, the well known Socialist deputy, as minister of labor. The policy of the government will remain practically unchanged.

GERMANY.—On May 15 the Reichstag by a vote of 210 to 52 passed the third reading of the bill for the payment of members, but rejected the government's proposal to change article 28 of the German constitution which requires the presence of a quorum of 199 members out of 397 for the validity of all divisions. Later in the month the Reichstag rejected the government's bill for establishing a new secretary of the colonies and refused most of the supplementary credits for South Africa. Early in September, as a result of disclosures of corruption in the colonial department of the foreign office, Prince Hohenlohe-Langenburg, the acting director, resigned, and the emperor created much comment by selecting Herr Bernhard Dernburg, a business man of Jewish descent, to succeed him.—The death on September 13 of Prince Albrecht of Prussia, regent of the duchy of Brunswick since 1885, reopened the question of the Brunswick regency. The Brunswick diet declined to proceed with the election of a new regent in the hope that the differences between the imperial government and the duke of Cumberland would be composed and that the duke might succeed to the throne. In October it was announced that the duke had offered to renounce his own claims and those of his eldest son in favor of his youngest

son but that the emperor and his chancellor had declined to consider the proposal.—A Socialist congress met at Mannheim on September 23, and a few days later Herr Bebel made a speech opposing general strikes as a mode of political agitation. A compromise was later adopted to the effect that the trades unions and the Social Democratic party should endeavor to arrive at an understanding in order to secure unity of action in general strikes and in all other matters of vital moment to both. Herr Bebel opposed a proposition that the party should enter upon a general propaganda against militarism, and pointed out that owing to the situation in Germany a strong military force was vital to her preservation.—Early in October the police at Posen seized 10,000 copies of a fiery proclamation calling upon Poles to meet and protest against religious instruction being given in the schools in German. Numerous other manifestations have occurred to show the bitterness stirred up by the government's efforts to Germanize the Poles.

AUSTRIA-HUNGARY.—In Austria the Gautsch cabinet, having failed to carry through its universal suffrage bill (see last RECORD, p. 374), resigned early in May. Prince Conrad zu Hohenlohe-Schillingsfürst, governor of Trieste, was entrusted with the formation of a new cabinet. In his first speech in the Reichsrath on May 15 the new premier expressed the hope that franchise reform would put an end to racial strife, and that alongside of its justifiable local patriotism each race would find room for Austrian patriotism. After holding office only a little more than three weeks, however, Prince Hohenlohe resigned because the emperor not only accepted the Hungarian demand that the tariff be voted in Hungary as a distinct Hungarian measure, but also the principle that the future economic relationship between Austria and Hungary be regulated not by a "customs and trade alliance" or economic compact as hitherto, but by a special commercial treaty as devised by Kossuth and the party of independence. Baron Keck, an official in the department of agriculture, was charged with the formation of a new cabinet, and after much difficulty succeeded in constructing a coalition composed of leaders from the German People's party, the German Progressive party, the Polish party and the Young Czech party.—On June 15 a violent demonstration was made by a mob in Vienna against the Hungarian delegation, and the incident, though deplored by the emperor and the Austrian cabinet, served still further to complicate the relations between the discordant parts of the dual monarchy. On September 9, in an interview between Baron von Beck and Dr. Wekerle at Budapest, it was agreed to entrust the solution of the various economic and technical questions to a special commission of Austrian and Hungarian experts.—The Hungarian elections early in May resulted in the return to the Chamber of an Independence majority of about 230. The new Chamber held its preliminary sitting in Budapest on May 21, and the new Parliament was formally opened on the 22d by the emperor-king, who referred regretfully to past misunderstandings, and expressed himself in favor of universal suffrage. As yet, however, no such measure has been passed.

ITALY.—Rather serious strike disorders occurred at Turin, Bologna and Rome early in May, but on the 11th the representative of the Chamber of Labor proclaimed the strike at an end. On May 18 Baron Sonnino's ministry resigned in consequence of an adverse vote on a question of procedure, and Signor Giolitti was entrusted with the task of forming a new ministry, in which he took the department of the interior and Signor Tittoni that of foreign affairs. The new minister announced measures for the relief of the southern provinces and of Sicily and Sardinia, for the organization of the railway service and for the construction of supplementary railroads in Sicily.

RUSSIA.—The resignation of Count Sergius Witte, the premier, was officially announced on May 2. This event was variously explained. According to one version, Count Witte resigned because he failed to persuade the czar to sanction new organic laws which would leave the premier a free hand and would deprive the Duma of any initiative. According to another version, Count Witte, while pursuing a policy of reaction and repression, endeavored to place the responsibility for this unpopular policy on other ministers, and the czar, to whom the count was *persona non grata*, took advantage of the resultant dissensions in the ministry to secure his resignation. It was also stated that Count Witte was kept in office only long enough to float a new loan and was practically dismissed as soon as the loan was secured. He was succeeded by M. Goremynkin. On May 8 new organic laws were promulgated which were regarded as inconsistent with the manifesto of October 30 (see last RECORD, p. 375).—The much heralded Duma (see last RECORD, p. 377) was opened by the czar in person at the winter palace May 10 in a disappointing speech, in which he said that the members must realize the necessity of order as well as of liberty. Professor Mouratseff, of Moscow, was elected president, and on the following day visited the czar. On the 12th the Duma, which contained a large majority of Constitutional Democrats, made a demonstration in favor of political amnesty. Three days later the address in reply to the speech from the throne was brought in. It urged the necessity of universal suffrage, the abolition of the old forms of government, the desirability of having ministers chosen by the majority, and especially urged that the state of siege imposed upon the country be raised. It then outlined a program of legislation, including devotion of state and monastic lands to the peasantry, and concluded with an appeal for amnesty. The address was adopted without a dissentient vote, but on the 25th the premier read a ministerial declaration rejecting the proposed solution of the agrarian question, ignoring the demand for amnesty and declaring that the matter of ministerial responsibility was outside the Duma's competency. Animated discussions of official abuses, interpellations of ministers regarding executions, resolutions in favor of the abolition of capital punishment, investigations into massacres and other well-meant efforts followed, but little was really accomplished, and it soon became apparent that the autocracy had no intention of conceding real power to the people.—

Horrible massacres of Jews occurred at Bialystok and elsewhere, there were mutinies in the army, much pillaging was done by the peasants, and the country remained in a condition approaching anarchy.—On July 21, after a ministerial council at Peterhof, the czar, moved partly it seems by the attempt of the Duma to appeal to the people on the agrarian question, issued an imperial ukase dissolving the Duma and ordering the convocation of a new Duma on March 5, 1907. The ukase asserted that the czar had been cruelly disappointed by the conduct of the representatives of the people; that "instead of applying themselves to the work of productive legislation" they had "strayed into spheres beyond their competence" and had "been making inquiries into the acts of local authorities established by ourselves and comments upon the imperfections of the fundamental laws which can be modified only by our imperial will." About the same time the czar relieved Goremkin of the premiership and appointed in his place M. Stolypin, minister of the interior. Many of the ex-members of the Duma left at once for Finland, met at Viborg and issued an address to the Russian people urging them to refuse to pay taxes or to serve in the army until popular representation was restored. The Labor and Social Democratic parties in the dissolved body issued a separate appeal declaring the acts of the government illegal and calling upon the army and navy to stand with the people against tyranny. All the revolutionary bodies combined to issue a manifesto to the peasants calling upon them to remove the local authorities and place all public funds in the hands of legally elected representatives.—On the night of July 30 a mutiny broke out in the great fortress of Sveaborg in Finland, and another about the same time at Kronstadt, but both were ultimately suppressed after much loss of life. Acts of violence occurred in almost all parts of the empire; in one week in August more than fifty officials were assassinated and more than forty wounded; on August 25 a desperate attempt resulting in the death of more than a score of persons was made upon the premier; the hated General Min was slain on the following day by a girl; and new risings of the mujiks and massacres of the Jews took place at Siedlce and elsewhere. Rigorous reactionary measures were taken by the government.—The court martial appointed to fix the responsibility for the surrender of Admiral Rojestvensky acquitted the admiral on the ground that being wounded he was not responsible, but condemned four officers to death, though with a recommendation that the sentence be commuted to dismissal from the service and the loss of certain rights. This recommendation was later acted upon favorably by the czar.—In July and August massacres of Armenians by Tartars were reported from the Caucasus.

MINOR EUROPEAN STATES.—The king of Spain and Princess Ena of Battenberg were married on May 31 in Madrid. The royal procession to and from the church of San Jeronimo were received enthusiastically by great crowds, but on the way back to the palace a bomb was thrown at the carriage containing the king and queen. The royal pair were unhurt, but

23 persons were killed and about 99 were wounded. The assassin, a Barcelona anarchist, on being discovered some days later near the capital killed a police officer and then himself. Early in June Senhor Moret tendered his resignation and that of his colleagues to the king, but the king replied that the premier and the Liberal party still retained his confidence and requested Senhor Moret to reconstruct the ministry. In July, however, this reconstructed ministry resigned, and Marshal Lopez Dominguez formed a new one composed of members of the Liberal Concentration party. In August a royal decree revised the legal formalities observed in civil marriages and dropped the obligation hitherto imposed upon the parties to declare their religion.—In May the Portuguese ministry resigned, in consequence of a disagreement with the king regarding the desirability of an early meeting of the Cortes. It was succeeded by a ministry under the leadership of Senhor Franco. The Cortes was formally opened on June 1.—Elections of half the members of the Chamber in Belgium on May 27 resulted in the decrease of the Clerical majority from 20 to 12.—The first Danish parliament under the new sovereign (see last RECORD, p. 378) was opened by King Frederick in person on October 1. The elections in the spring left the Christensen ministry in a hopeless minority.—On June 22 King Haakon and Queen Maude of Norway (see last RECORD, p. 377) were crowned with much ceremony in the cathedral at Trondhjem. Many European notabilities were present. On the following day the government announced a policy of peace, of frugality, and an intention to endeavor to solve the principal social questions, especially those of insurance of workingmen against illness, old age and the perils of the sea.—In May the first chamber of the Swedish Riksdag rejected the government reform bill for an extension of the suffrage (see last RECORD, p. 378) and adopted the opposition amendment for proportional representation. The second chamber, however, passed the bill. As the king refused to dissolve the second chamber and thereby render possible an appeal to the country, the ministry resigned, and a new one was formed by Commodore Lindman, director general of telegraphs. The king called upon the new ministry to bring in a new franchise measure at the next meeting of the Riksdag.—A new Servian ministry entered office early in May, with M. Pasitch as premier and foreign minister. Five junior officers who congratulated ex-Captain Novakovitch, editor of the *Ortasbina*, on his campaign against the regicides were in May tried by a court martial and dismissed from the service. The *Ortasbina* was also suppressed. Later in the month King Peter issued an order placing on the retired list with full pay the officers chiefly implicated in the murder of King Alexander.—Early in May Colonel Yankoff, one of the leading Macedonian chiefs, was killed in a skirmish with Turkish troops. Disorders and race conflicts in the Balkan region appear to be increasing.—The Greek chamber elected in April closed its first session on July 18, after reforming the gendarmerie, voting a series of military laws and sanctioning a system of electric railways for Athens and the Piræus.—Late in

August it was announced that the protecting powers had agreed upon certain measures for Crete, *viz.* to reorganize the gendarmerie, to withdraw the international troops as soon as the Cretan gendarmerie and militia showed themselves competent to preserve order and to extend the control of the international finance committee over the island. Prince George of Greece resigned his position as high commissioner in September and was succeeded by M. Zaimis, ex-premier of Greece. Recent events seem to render the probability of the incorporation of the island with Greece more remote.

AFRICA AND ASIA.

AFRICA.—A recrudescence of fanatical race and religious hostility in Egypt resulted on June 13 in an attack at Tanta upon five British officers, with the result that one was killed and others were injured. The danger of further outbreaks with the kindling of a possible "holy war" appeared so great that on July 5 Sir Edward Gray, the British foreign secretary, informed Parliament that extraordinary measures might have to be resorted to.—The revolt of the Pretender in Morocco has not yet been suppressed. Early in September insurgents took possession of Mogador, but quitted the city on the 8th. In the middle of October it was reported that a revolt had broken out in the Kehanna district, and that communication between Marakesh, the southern capital, and the coast was cut off. In the same month the town of Arzila was seized by insurgents, who murdered many Jews, but on the 27th it was recaptured by Raisuli, who had been appointed pasha of the town.—In Natal the revolt of the Zulus (see last RECORD, p. 379) assumed alarming proportions, but after conflicts in which several thousand of the natives were killed, and in one of which Bambaata, the chief leader, lost his life, the movement was suppressed.—In Cape Colony the assembly in August passed an amnesty bill removing all disabilities arising out of participation in the war against Great Britain.—In the Transvaal the imperial government's determination to repatriate the Chinese (see last RECORD, p. 380) has continued to excite much opposition among mine workers. The plan for the new Transvaal constitution was announced in the House of Commons by Winston Churchill on July 31. The principle of "one vote one value" is adopted; there is to be no discrimination between Boer and Briton; the assembly is to consist of 69 members, 34 from the Rand, 29 from Pretoria and six from the rest of the country; in the sessions either Dutch or English may be used; during the first parliament there is to be a second chamber of 15 nominated by the crown; and all recruiting of Chinese labor is to cease after November 30.—The uprising in German Southwest Africa has not yet been entirely suppressed, although in May, Marengo, the chief leader, fled to Cape Colony.—In Nigeria on May 3 a British force captured the king of Hadeija. Severe fighting later took place in southern Nigeria. In September an uprising at Benin resulted in the death of two Europeans and caused the traders to flee from the place.—

In September a conflict between French troops and Fahavola tribesmen occurred near Majunga, Madagascar, and resulted in a defeat for the natives, who lost 360 killed and many wounded.

ASIA.—The revolt in Yemen (see last RECORD, p. 378) against Turkish authority still continues. A mutiny of Turkish troops at Sana in June was suppressed only after much bloodshed.—In Persia the delay of the shah in ordering elections for the new parliament (see last RECORD, p. 379) caused much disaffection and considerable disorder. The shah ultimately dismissed his reactionary grand vizier, and in September published an ordinance providing that the parliament should contain 156 members, elected biennially, 60 from Teheran and 96 from the rest of the country. Every male Persian between the ages of 30 and 70 who is not in the service of the state, who is able to read and write, and who has never been convicted of crime, is entitled to vote. Inviolability of members is promised.—In August the viceroy of India appointed a committee to consider reforms in the administration. It is proposed to extend the representative element in the legislative council.—In China the system of sending students abroad for study has been revived by the Viceroy Yuan Shih-kai, and an American, Dr. Tinney, for some time principal of Tien-tsin university, has been appointed supervisor over the students in England and America. In August the dowager empress appointed a committee of officials to consider the reports of the commissions returned from abroad (see last RECORD, p. 379) and to make recommendations with regard to them. On September 1 the emperor issued a decree promising to grant a constitution as soon as the people were ripe for it and intimating a readiness to introduce reforms. A supplementary decree appointed a large number of high officials to deliberate upon and suggest the necessary changes. Later in the month an edict was issued ordering the abolition of the use of opium within ten years. The first section of the railroad from Peking to Kalgan was opened on September 30. The road is being built by Chinese under the direction of a Chinese engineer educated in America. Failure of the Chinese to participate in forming the Southern Manchuria railroad company has resulted in its being exclusively controlled by the Japanese. In August Boxer troubles broke out in Shansi but were suppressed. A severe famine, involving want for many millions of people, exists in Kiang-Su province in Central China.—Late in May a revolt of some dimensions occurred at Hong-ju in Corea, but it was soon put down by the Japanese.—The distressing conditions created by the famine in northern Japan began to improve in May. The government has reported that of the seventeen railroad companies to be purchased by the government (see last RECORD, p. 379) six would be bought before the end of the year. The purchase will entail an expense of about \$123,000,000.

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